150 U S 318

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1364. ~~150~~ 576 481 26

GEORGE I. SENEY, TRUSTEE, APPELLANT,

vs.

THE WABASH WESTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 14, 1889.

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1 *Stipulation.*

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK and JAMES CHENEY, Complainants, *vs.* THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY and Others, Respondents.	(Consolidated Cause) Nos. 2357 & 2464. In Equity.

In the matter of the intervening petition of George I. Seney, trustee, for an order upon the receivers appointed herein to pay intervenor the sum of $27,000, the rental claimed to be due from said receivers for the use by them of the Clarinda and St. Louis railway.

Now come George I. Seney, trustee, and The Wabash, St. Louis & Pacific Railway Company, The Central Trust Company of New York, and James Cheney, trustee, James F. Joy, O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, trustees, and sometimes styled "purchasing committee," and their successor, The Wabash Western Railway Company, by their respective solicitors, and, for the purpose of simplifying the record in the above-entitled matter and saving the copying in full of the record in the above-consolidated cause, stipulate and agree that the following abstracts and recitals of the record and proceedings in said consolidated cause are true and correct statements of said record and proceedings, so far as same pertain to said cause, and may be taken and accepted by the Supreme Court of the United States in the hearing of the appeal from the final decree in such intervention as of the same force and effect as if said record and proceedings were fully and at length embraced in the transcript of appeal herein.

2 These admissions are to be without prejudice to either party in any other proceeding or in any other action, and are for the purpose of this suit only, and any party to this proceeding may, for the purpose of said appeal, bring up and insert in as part of said abstracts and recitals any other part of the record in the said consolidated cause that he may deem material.

THEODORE SHELDON,
Solicitor for George I. Seney, Trustee, Intervenor.
WELLS H. BLODGETT,
Solicitor for The Wabash, St. Louis & Pacific Ry Co., The Central Trust Co. of N. York and James Cheney, Trustees, James F. Joy, O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles and The Wabash Western Ry Co.

Viz., on April 23rd, 1886, the following intervening petition and exhibits thereto annexed were filed in this cause:

(*Intervening Petition.*)

Circuit Court of the United States for the Eastern District of Missouri.

CENTRAL TRUST COMPANY OF NEW YORK and JAMES CHENEY, Complainants, *against* WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.	Consolidated Cause. In Equity.

To the honorable the judges of the said court, in equity sitting:

3 The petition of George I. Seney respectfully shows unto your honors—

That on or about the fifteenth day of July, 1879, the Clarinda and St. Louis Railroad Company, a corporation created by and then and now existing under the laws of the State of Iowa, did demise and lease to the St. Louis, Kansas City and Northern Railway Company, its successors and assigns, for the term of ninety-one years from the said date, its entire line of railroad, then located or thereafter to be constructed, extending from the town of Clarinda, Iowa, in a southeasterly direction through the county of Page, in the said State of Iowa, to the boundary line between the States of Iowa and Missouri; a true copy of which said lease is hereunto annexed, marked "Exhibit A," and to which your petitioner refers, and prays that the same may be taken as a part of this petition as fully as if set forth *in extenso* herein, the original of which or a duly certified copy thereof will be produced and proved upon the hearing hereof.

That on or about the said fifteenth day of July, 1879, the said St. Louis, Kansas City and Northern Railway Company, being then the owner and in the possession of a certain line of railway extending from a point on the east side of Nodaway river in a northerly direction to the boundary line between the States of Missouri and Iowa, and being also the lessee and in the possession of the line of railway demised in and by the lease aforesaid, in order to secure the prompt payment of the principal and interest of its 264 bonds, each for the sum of $1,000, and in pursuance of the express provisions of the said lease, did execute to your petitioner its certain mortgage deed wherein and whereby it conveyed to your petitioner, as trustee, all and every part of the continuous line of railroad extending

4 from the east side of the Nodaway river, in the county of Nodaway and State of Missouri, to the town of Clarinda, in the county of Page and State of Iowa; a true copy of which said mortgage is hereunto annexed, marked "Exhibit B," and to which your petitioner refers, and prays that the same may be taken as a part of this his petiiton as fully as if set forth *in extenso* herein, the original of which or a duly certified copy thereof will be produced and proved upon the hearing hereof.

That in accordance with the further terms of the said lease and

on or about the said fifteenth day of July, 1879, the said Clarinda and St. Louis Railroad Company, in order to further secure the said 264 bonds and the interest thereon, did execute to your petitioner its certain guaranty mortgage deed wherein and whereby it conveyed to your petitioner, as trustee, its said line of railroad extending from the town of Clarinda to the boundary line between the States of Iowa and Missouri; a true copy of which said guaranty mortgage deed is hereunto annexed, marked "Exhibit C," and to which your petitioner refers, and prays that the same may be taken as a part of his petition as fully as if set forth *in extenso* herein, the original of which or a duly certified copy thereof will be produced and proved upon the hearing hereof.

That upon the execution of the said lease the said St. Louis, Kansas City and Northern Railway Company entered upon the said demised premises and remained in the sole possession thereof until on or about the tenth day of November, A. D. 1879, when it became and was consolidated with the Wabash Railway Company, under the corporate name of the Wabash, St. Louis and Pacific Railway Company, one of the defendants herein; that by the terms of said consolidation the said Wabash, St. Louis and Pacific Railway Company became, was, and is liable upon all the obligations of every kind of the said St. Louis, Kansas City and Northern Railway Company, including its liability upon the lease hereinbefore described, and that immediately upon said consolidation the said Wabash, St. Louis and Pacific Railway Company entered upon the sole use and possession of the premises demised by said lease and continued in such use and possession until on or about the twenty-ninth day of May, 1884, when, under and by virtue of proceedings had in this cause, the defendants, Solon Humphreys and Thomas E. Tutt, were appointed receivers of all the property whatsoever of the said Wabash, St. Louis and Pacific Railway Company, including its rights as lessee under the said lease to the possession of the said demised premises; and that from and after the last-named date and up to the sixteenth day of April, 1886, the said receivers had the sole use and possession of the said demised premises.

That the semi-annual instalment of rent reserved by said lease, being the semi-annual instalment of interest upon the bonds therein described, falling due February first, 1885, together with two like instalments of rent falling due August first, 1885, and February first, 1886, has not nor has any part thereof been paid, and that there is now due and unpaid upon the said lease, as the rent therein reserved from August first, 1884, up to and until April sixteenth, 1886, the sum of twenty-seven thousand and sixty dollars ($27,060.00); and the said receivers, although often requested by your petitioner so to do, neglect and refuse to pay said sum or any part thereof.

That on account of said defaults and such refusals to pay said instalments or to surrender possession of said demised premises your petitioner, on or about the twentieth day of March, 1886, filed in this cause his certain petition, reciting said defaults and praying that

the said demised property be surrendered to him; that said
6 petition was heard before this court on the eighth day of December, 1885, and thereupon continued for further action, and that subsequently on the sixth day of April, 1886, an order was entered herein directing such surrender upon certain conditions set forth in said order, a copy of which is hereto annexed, marked "Exhibit D."

That after the entry of the last-named order Thomas McKissock, therein mentioned, was, upon the prayer of your petitioner, duly appointed receiver of the said demised property by the circuit court of the United States for the southern district of Iowa, and in accordance with the terms of the said order of April sixth did, on the sixteenth day of April, 1886, enter into possession of said demised premises and has since continued to operate and manage the same.

That no part of the rent reserved by said lease and none of the bonds secured by said mortgages have been paid, and that no part of the interest thereon which has matured since August first, 1884, has been paid, and that neither your petitioner nor any one of the holders of said bonds received any use or benefit from said demised premises between August first, 1884, and April sixteenth, 1886.

Your petitioner further shows to the court that by reason of the said defaults in the payment of said rentals the said Solon Humphreys and Thomas E. Tutt, as receivers, are indebted to your petitioner for the use and occupation of the said demised premises under the said lease in the sums of money hereinbefore set forth.

That since the first of the said defaults your petitioner has been always ready and willing to accept the surrender of the said demised premises.

Your petitioner further shows unto the court that by reason of the defaults in the payment of the rental for the said demised premises, and such default continuing for more than sixty days,
7 the principal of each and all of said 264 bonds was declared due and payable, and thereafter your petitioner, as trustee, commenced proper action for the foreclosure of each of the mortgages to him hereinbefore described, both of which actions are now pending and undetermined in the circuit court of the United States for the southern district of Iowa.

Wherefore your petitioner prays that the said Solon Humphreys and Thomas E. Tutt, receivers as aforesaid, be ordered by this court to pay to your petitioner the said sum of twenty-seven thousand and sixty dollars ($27,060.00) for the rental of said premises during the term when the same were in the sole possession and control of the said Solon Humphreys and Thomas E. Tutt, receivers as aforesaid, and for such other relief as may be just.

And your petitioner, as in duty bound, will ever pray, &c.

Dated April 19th, 1886.

GEORGE I. SENEY, *Petitioner*,
By STEWART & BOARDMAN,
Solicitors for Petitioner for the Purposes of This Motion.

THEODORE SHELDON, *Of Counsel.*

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } ss:

Edward W. Sheldon, being duly sworn, deposes and says that he is a member of the firm of Stewart and Boardman, who have been and now are retained and employed by George I. Seney, the petitioner named in the foregoing petition, as his solicitors and counsel, with authority from him to prepare, subscribe their names to, and file the said petition in said court; that for several months
8 last past he has been familiar with the condition and affairs of the Clarinda and St. Louis Railroad Company, described in said petition, and also familiar with the matters and things set forth in said petition, and that the same are true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Deponent further says that the reason this petition is not signed and verified by said George I. Seney in person is that the said George I. Seney, who is a resident of the city and county of New York, is now absent therefrom.

EDWARD W. SHELDON.

Subscribed and sworn to before me this 20th day of April, 1886.

WALDRON WILLIAMS,
[SEAL.] *Notary Public, N. Y. County.*

I enter myself as security for all costs to accrue upon foregoing petition.

22 April, 1886.

THEODORE SHELDON.

EXHIBIT A.

Lease of the Clarinda and St. Louis Railroad.

This agreement, made and entered into this 15th day of July, A. D. 1879, by and between the Clarinda and St. Louis Railroad Company, a corporation organized and existing under the laws of the State of Iowa, party of the first part, and the St. Louis, Kansas City and Northern Railway Company, a corporation organized and existing under the laws of the State of Missouri, party of the second part, witnesseth:

That whereas the party of the first part is the owner of a
9 certain line of railroad in the State of Iowa extending from the town of Clarinda, in said State, in a southerly direction through the county of Page, in said State, and terminating at the boundary line between the States of Iowa and Missouri; and

Whereas the St. Louis, Kansas City and Northern Railway Company, party of the second part, owns, controls, and operates a railroad extending from the city of St. Louis, in said State of Missouri, to the city of Brunswick, and from thence in a northwesterly direc-

tion to the city of Council Bluffs, in the State of Iowa, with a branch line extending in a northerly direction from a point on the east side of Nodaway river, in Nodaway county, Missouri, to the boundary line between the States of Missouri and Iowa, at which last-named point the line of railroad owned, controlled, and operated by the party of the second part intersects, joins, and connects with the line of railroad owned by the party of the first part:

Now, therefore, the said Clarinda and St. Louis Railroad Company, party of the first part, in consideration of the covenants and agreements herein contained to be kept and performed by the St. Louis, Kansas City and Northern Railway Company, party of the second part, has leased, demised, and let, and by these presents doth lease, demise, and let, unto the said party of the second part, its successors and assigns, free from all liens and encumbrances of every kind whatsoever, for the full term of ninety-one years from and after the date of this agreement, the entire line of railroad as aforesaid as the same now is or may be hereafter located, constructed, maintained, operated, or acquired, with all the real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereunto belonging, together with the right, privilege, and franchise of maintaining and operating said
10 railroad and regulating, fixing, collecting, and receiving all freights, tolls, and charges for use thereof, and for the transportation of persons and property upon or over the same, as the same now is or may be hereafter constructed, operated, maintained, or acquired; and

Whereas the St. Louis, Kansas City and Northern Railway Company, party of the second part, for the purpose of obtaining the necessary funds with which to construct and equip the line of railroad hereby leased to it, and also to secure the necessary funds with which to complete and equip that portion of its said branch line of railroad as lies in the county of Nodaway, State of Missouri, has agreed, and hereby further agrees and promises, to make and issue its own bonds in denominations of one thousand dollars each to the extent and amount of twelve thousand dollars per mile for each and every mile of said branch railroads, which bonds are to run for the period of forty years from and after August 1st, 1879, and bear interest at the rate of six per cent. per annum, with interest attached, payable on the first days of August and February in each year, the principal and interest of said bonds to be made payable in gold coin of the present weight and fineness, as fixed by the laws of the United States now in force; and to secure the payment of the principal and interest of said bonds the said St. Louis, Kansas City and Northern Railway Company, party of the second part, has further agreed, and in consideration of the covenants and agreements herein contained, to be kept and performed by the party of the first part, the said St. Louis, Kansas City and Northern Railway Company, party of the second part, hereby does agree to execute a first mortgage upon all its right, title, interest, and estate of and in said branch line of railroad and its appurtenances in the said States, extending from
11 said point on the main line of its Omaha Division, in Noda-

way county, Missouri, to Clarinda, in the county of Page, in the State of Iowa, as the same is now owned or leased, demised, and let unto it, the party of the second part, by these presents:

Now, therefore, the said party of the first part, for the purpose of securing the completion and operation of its said line of railroad in the State of Iowa by the party of the second part upon the terms and conditions hereinafter set forth and for the purpose of further securing the payment of the principal and interest of said bonds to the amount aforesaid, and as an inducement for parties to purchase said bonds, hereby covenants and agrees to execute a first mortgage or deed of trust upon its railroad aforesaid, and thereby grant, bargain, sell, convey, and confirm unto the trustee or trustees to be named by said mortgage, subject only to the provisions of this agreement, all its right, title, interest, and estate of every kind whatsoever in and to its said railroad, with all the real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereunto belonging as the same now are or may be hereafter constructed, maintained, operated, or acquired, together with all the privileges, rights, and franchises of the party of the first part; and in consideration of the several promises and undertakings and agreements herein contained, to be kept and performed by the said party of the first part, the party of the second part hereby covenants and agrees to and with said first party that it, the said party of the second part, its successors or assigns, will, within the period of two years from and after the date of this instrument, construct the railroad of the party of the first part upon the terms and conditions following, to wit: For every one hundred dollars of
12 money expended by the said party of the second part in the construction of said line or in the purchase of right of way or depot grounds therefor or in the erection of depots, platforms, cattle yards, water-tanks, or fencing upon and along the said line of railroad the party of the first part shall issue and deliver to the party of the second part, upon demand, one share of full-paid stock in said Clarinda and St. Louis Railroad Company, and the party of the second part, in consideration of the promises aforesaid, hereby agrees that it, the said party of the second part, its successors or assigns, will, after the construction of the railroad of the party of the first part, maintain and operate the same upon the terms and conditions following, to wit:

First. From the gross earnings or receipts of said railroad there shall be first paid all the costs and expenses of maintaining, operating, and improving the same.

Second. The party of the second part or its successors or assigns shall, out of the earnings and receipts of said railroad or from its own funds, pay the interest upon the bonds aforesaid to the amount of twelve thousand dollars per mile for each mile of said railroad.

Third. If, after paying the costs and expenses of maintaining and operating and improving said railroad and the interest upon said bonds to the amount of twelve thousand dollars per mile, there is anything remaining, then ten per cent. of such remainder shall be paid over upon demand to the party of the first part for the use and

benefit of its stockholders within ninety days from and after the first day of January in each and every year, but it is expressly understood and agreed by and between the parties hereto that any failure of the party of the second part, its successors or assigns, to pay over to the party of the first part the whole or any part
13 of said ten per cent. shall not work a forfeiture of this agreement or impair any of the rights of said party of the second part hereunder, but the party of the first part may, by any appropriate action, recover the same from said party of the second part or its successors or assigns.

And the party of the first part further agrees to and with the said second party that it, the said party of the first part, will keep up its organization and renew its corporate existence as a railroad corporation under the laws of the State of Iowa during the whole time of this lease, and that it will, in its own name and at the request and expense of said party of the second part, institute and prosecute all such suits and proceedings of every kind whatsoever and do and perform all such acts and things as may be deemed necessary by said second party in order to secure the necessary right of way and depot grounds for the use of said railroad or which may be deemed necessary by said second party in order to preserve and protect all the rights of the party of the second part under this agreement.

And the party of the first part further agrees to collect and pay over to the party of the second part all donations, subscriptions, and subsidies of every kind whatsoever which have been or which may be hereafter made by any county, city, town, township, or individual either to the capital stock of said Clarinda and St. Louis Railroad Company or to aid said company in the construction or equipment of said line of railroad; and the party of the second part hereby agrees to expend all sums of money so collected and paid over to it in the construction or equipment of the line of railroad aforesaid, but it is expressly understood and agreed that the party of the second part shall not be entitled to any stock in said Clarinda and St. Louis Railroad Company on account of the expenditure as aforesaid of said donations, subscriptions, and subsidies in the construction and equipment of said railroad.

14 This agreement is made with the written assent of more than a majority in interest of all the stockholders of the St. Louis, Kansas City and Northern Railway Company, a certificate of which assent, signed by the secretary of the company, is on file in the office of the secretary of the State of Missouri; and it is furthermore made with the written assent of more than three-fourths in interest of all the stockholders in said Clarinda and St. Louis Railroad Company, which said assent is recorded on the books of said company.

In testimony whereof the said Clarinda and St. Louis Railroad Company, party of the first part, has caused its seal to be hereunto affixed and these presents to be subscribed by its president and secretary on this fifteenth day of July, A. D. 1879; and the said St. Louis, Kansas City and Northern Railway Company, party of the

second part, has also, in testimony whereof, hereunto affixed its corporate seal and caused these presents to be subscribed by its president and secretary the day and year last aforesaid.

CLARINDA AND ST. LOUIS RAILROAD COMPANY,

[SEAL.] By B. W. LEWIS, JR., *President.*

Attest: JAMES F. HOW, *Secretary.*

ST. LOUIS, KANSAS CITY AND NORTHERN RAILWAY COMPANY,

[SEAL.] By B. W. LEWIS, JR., *President.*

Attest: JAMES F. HOW, *Secretary.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on the 15th day of July, A. D. 1879, before me, the undersigned notary public within and for the city and county of St. Louis and State of Missouri, came B. W. Lewis, Jr., president, and James F. How, secretary, of the Clarinda and
15 St. Louis Railroad Company, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledge the same to be the act and deed of the said company by them as president and secretary of said Clarinda and St. Louis Railroad Company, party thereto, and that they affixed the seal of said corporation thereunto by authority of said company, and severally acknowledged that they executed the same as the act and deed of said corporation for the purpose therein mentioned, and that the seal so affixed is the corporate seal of said company; and I further certify that I was qualified as notary public aforesaid on the 13th day of March, A. D. 1876, and that my official term expires on the 9th day of March, A. D. 1882.

In testimony whereof I have hereunto set my hand and affixed my official seal this the 15th day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] GEO. S. GROVER,
Notary Public, St. Louis City and County, Missouri.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this the 15th day of July, A. D. 1879, before me, the undersigned notary public within and for the city and county of St. Louis and State of Missouri, came B. W. Lewis, Jr., president, and James F. How, secretary, of the St. Louis, Kansas City and Northern Railway Company, who are personally known
to me to be the same persons whose names are subscribed to
16 the foregoing instrument of writing as parties thereto, and they acknowledged the same to be the act and deed of the said company by them as president and secretary of said St. Louis, Kansas City and Northern Railway Company, party thereto, and

they affixed the seal of said corporation thereunto by authority of said company, and severally acknowledged that they executed the same as the act and deed of said corporation for the purpose therein mentioned, and that the seal so affixed is the corporate seal of said company.

And I further certify that I was qualified as notary public aforesaid on the 13th day of March, A. D. 1876, and that my official term expires on the 9th day of March, A. D. 1882.

In testimony whereof I have hereunto set my hand, affixed my official seal this the fifteenth day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] GEO. S. GROVER,
Notary Public, St. Louis City and County, Missouri.

EXHIBIT B.

This deed, made and entered into this fifteenth day of July, A. D. 1879, by and between the St. Louis, Kansas City and Northern Railway Company, a corporation organized under the laws of the State of Missouri, party of the first part, and George I. Seney, of New York, party of the second part, witnesseth: That whereas the said St. Louis, Kansas City and Northern Railway Company has made and executed two hundred and sixty-four bonds, bearing date on the first day of August, A. D. 1879, each for the sum of one thousand dollars, all of which are made payable to George I. Seney or
17 bearer forty years after said date, for value received, at the National Bank of Commerce, in the city and State of New York, with interest from date at the rate of six per cent. per annum, payable semi-annually, on the first days of August and February in each year on the presentation and surrender of the proper annexed coupons, the principal and interest of said bonds being payable in gold coin of the present weight and fineness as fixed by the laws of the United States now in force, and which bonds are also exempt from any income tax that now is or may be hereafter levied or provided for by any law of the United States; and whereas said St. Louis, Kansas City and Northern Railway Company is the owner of a branch line of railroad, commencing on the main line of its Omaha Division at a point in Nodaway county, Missouri, on the east side of the Nodaway river, and extending in a northerly direction to the boundary line between the States of Missouri and Iowa; and whereas the Clarinda and St. Louis Railroad Company, a corporation organized under the laws of Iowa, is the owner of a line of railroad extending from the town of Clarinda, in the State of Iowa, in a southerly direction through the county of Page, in said State, to a point on said boundary line between the States aforesaid, at which point the lines of railroads aforesaid join, intersect, and connect with each other; and whereas the said Clarinda and St. Louis Railroad Company, by its certain agreement in writing, dated on the fifteenth day of July, A. D. 1879, for certain good and valuable considerations therein expressed, has leased, demised, and let unto the St. Louis, Kansas City and Northern Railway Company, its suc-

cessors and assigns, free from all lien and incumbrances of every kind whatsoever, for the full term of ninety-one years from and after the date of said agreement, the entire line of its said railroad as the same now is or may be hereafter constructed, maintained, operated, or acquired, with all the real estate, right of way, depots,
depot grounds, side tracks, engines, cars, and other ap-
18 purtenances thereunto belonging, together with the right,
privilege, and franchise of maintaining and operating said railroad and regulating, fixing, collecting, and receiving all freight, tolls, and charges for the use thereof or for the transportation of freight, passengers, and property upon or over the same; and whereas the lines of railroad aforesaid will, when completed, constitute and form one continuous line of railway, commencing on the main line of the Omaha Division of the St. Louis, Kansas City and Northern railway, at a point on the east side of the Nodaway river, in Nodaway county, Missouri, and extending from thence in a northerly direction to the town of Clarinda, in the county of Page, in the State of Iowa, which said continuous line is designated upon said bonds and is to be hereafter known as the Clarinda Branch of the St. Louis, Kansas City and Northern railway; and whereas the St. Louis, Kansas City and Northern Railway Company, for the purpose of obtaining the necessary funds with which to construct and equip said Clarinda Branch of its railroad, has issued its bonds aforesaid at the rate of twelve thousand dollars per mile for each and every mile of the railroad aforesaid in the States of Missouri and Iowa:

Now, therefore, to secure the prompt payment of the principal and interest of the bonds herein described and hereby secured, and for the further consideration of one dollar to it, the said St. Louis, Kansas City and Northern Railway Company, paid by the said George I. Seney, the receipt of which is hereby acknowledged, the said St. Louis, Kansas City and Northern Railway Company has given, granted, bargained, sold, assigned, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, assign, convey, and confirm, unto the said George I. Seney, of New York, his successor, successors, and assigns in this trust, forever, all and every
part and parcel of the continuous line of railroad aforesaid
19 and all right, title, and interest therein as now owned, leased,
or held by the said St. Louis, Kansas City and Northern Railway Company, commencing on the main line of the Omaha Division of the St. Louis, Kansas City and Northern Railway Company at said point on the east side of the Nodaway river, in Nodaway county, Missouri, and extending from thence in a northerly direction to the town of Clarinda, in the county of Page, in the State of Iowa, as said railroad now is or may be hereafter constructed, maintained, operated, or acquired, together with all the privileges, rights, franchises, real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereunto belonging. This conveyance is made in trust, however, for the following purposes, to wit: If the principal of said bonds and the several installments of interest thereon be duly paid as the same become due, then this deed shall be void and the property hereby conveyed shall be

released at the cost of said St. Louis, Kansas City and Northern Railway Company; but if the principal of said bonds or any part thereof shall not be paid by said railway company when the same become due, or if any installment of interest upon said bonds or any part thereof shall not be paid within sixty days after the same become due and payment thereof shall have been demanded at the place of payment, then the principal of the bonds hereby secured shall become due and payable, and the said George I. Seney or his successor, successors, or assigns in this trust shall, whenever requested so to do by the holder or holders of fifty or more of the bonds hereby secured, take possession of all of said mortgaged property, and during such default he shall manage and control the same and collect and receive all the tolls and income thereof, and upon demand, in writing, of the holder or holders of fifty or more of said bonds of the said George I. Seney or his successor, successors,
20 or assigns in this trust shall proceed to foreclose this mortgage and sell the property herein and hereby conveyed, at the city of St. Louis, at public auction, to the highest bidder for cash, after having first given twenty days' public notice of the time, terms, and place of sale by advertisement in at least one daily newspaper published in the city of St. Louis and one daily newspaper published in the city of New York, and upon making such sale said George I. Seney or his successor, successors, or assigns in this trust shall execute to the purchaser or purchasers thereof an absolute deed to the property hereby conveyed, and he, the said George I. Seney, his successor, successors, or assigns in this trust, shall receive the net proceeds of such sale and apply the same as follows, to wit:

First. To the payment of the costs and expenses of this trust, including the commission or compensation of the trustee.

Second. To the payment of the principal of said bonds and the interest thereon to the day of sale; and in case the proceeds of said sale are not sufficient to pay the whole of said principal and interest to the day of sale, then said trustee shall apportion the same *pro rata* among the holders of said bonds; and, third, if, after paying all of said bonds and the interest thereon to the day of sale, there shall remain a surplus, said trustee shall pay the same to the St. Louis, Kansas City and Northern Railway Company, its successors or assigns; but it is hereby expressly understood and agreed by and between the parties hereto that the purchaser or purchasers of that portion of said railroad and other property situated in the State of Iowa and hereby conveyed shall not be bound by any of the covenants or agreements contained in the lease of the Clarinda and St. Louis Railroad Company of its railroad and appurtenances aforesaid to the St. Louis, Kansas City and Northern Railway Company unless he or they shall elect in writing to be bound by the covenants contained in said lease; and whereas it is provided in the bonds hereinbefore described and hereby secured that said bonds shall pass
21 by delivery or by transfer on the books of the St. Louis, Kansas City and Northern Railway Company in the city of New York, and that after a registration of the ownership of said bonds, certified by the transfer agent of said railway company, no transfer of said

bonds, except upon the transfer books of said company, shall be valid unless the last transfer shall be to bearer, which transfer to bearer shall again render said bonds transferable by delivery, and that said bonds shall continue subject to successive registration and transfer to bearer as aforesaid at the option of each successive holders, provided the coupons issued with the same and not due are attached to said bonds when such registration is desired, and not otherwise:

Now, it is agreed by and between the parties hereto that the St. Louis, Kansas City and Northern Railway Company or its successor, seccessors, or assigns will keep in its office, in the city of New York, the necessary books in which the registration and transfer of said bonds may be made, as therein provided for, and said company shall from time to time appoint a transfer agent in said city of New York, and such transfer agent shall sign all certificates of registration and transfer provided for herein or in the bonds aforesaid, and said St. Louis, Kansas City and Northern Railway Company, for itself and its successors and assigns, hereby covenants and agrees that in case of default in the payment of the principal of said bonds or any installment of interest thereon it will at once, upon demand, deliver possession of the railroad and other property hereby conveyed to the trustee herein named or to his successor, successors, or assigns; but it is further expressly understood and agreed by and between the parties hereto that said St. Louis, Kansas City and Northern Railway Company, its successors or assigns, shall, until
22 such time as default is made in the payment of the interest or principal of said bonds, be entitled to have and to hold the possession of said railroad, with all its appurtenances, and it shall also be entitled to collect, receive, and retain all revenue arising for the use thereof. The said St. Louis, Kansas City and Northern Railway Company hereby further agrees for itself, its successors and assigns, that it will from time to time pay all the expenses of this trust, including the compensation and expenses of the transfer agent herein provided for; and the said George I. Seney, of New York, party of the second part, hereby accepts this conveyance and covenants to perform the trust hereby vested in him according to the terms of this deed. In case a vacancy shall occur in this trust from any cause whatever, then a new trustee or trustees may be appointed by any court of competent jurisdiction upon the application of the holder or holders of fifty or more of the bonds hereby secured, and such court may by its order or decree vest in such new trustee or trustees so appointed all the authority, estate, and powers possessed under this instrument by said George I. Seney. It is hereby further agreed that nothing herein contained shall be held or construed to prevent or interfere with a foreclosure of this instrument, the appointment of a receiver, or any other act or proceeding appropriate or customary in such cases by any court of competent jurisdiction; and it is also agreed as aforesaid that after default in the payment of interest or principal of any of the bonds hereby secured and when such default shall have continued for a space of sixty days after demand as hereinbefore set forth, then the party of the second part, his successor, successors, and assigns in this trust, in any suit,

action, or proceeding instituted at the request of the holder or holders of fifty or more of the bonds hereby secured, shall be
23 entitled as a matter of right to the appointment by any court of competent jurisdiction of a receiver of the railroad, rolling stock, and all property and estate conveyed by this instrument, and such receiver shall have all the powers and rights usually possessed by receivers in similar cases. It is further understood and agreed by and between the parties hereto that the purchase price of the bonds secured by this mortgage is to be received by and paid to the said George I. Seney, his successor, successors, or assigns in this trust, and until the final completion of the railroad hereby mortgaged and conveyed the proceeds arising from the sale of said bonds shall only be paid by said trustee to the party of the first part, its successors or assigns, in installments of fifty thousand dollars, and with the exception of the first installment the same shall be paid only on the deposit with such trustee of a certificate of the president of said railroad company and the chief engineer in charge of the construction of the line of railroad hereby mortgaged that the previous installment has been expended exclusively in the construction or equipment of said line of railroad or in the purchase of material for the construction thereof; and it is hereby further mutually covenanted and agreed by and between the parties of this instrument that the said party of the second part, his successor, successors, or assigns in this trust, shall be accountable only for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent or servant employed by him or them when such agent or servant shall have been employed with reasonable discretion.

In testimony whereof the said St. Louis, Kansas City and Northern Railway Company has caused its seal to be hereunto affixed and these presents to be subscribed by its president and secre-
24 tary, at St. Louis, Missouri, on this the fifteenth day of July, A. D. one thousand eight hundred and seventy-nine.

And the said George I. Seney, trustee herein, has also signed these presents and attached his seal hereto in signification of his acceptance of the trust herein created.

ST. LOUIS, KANSAS CITY AND NORTHERN RAILWAY COMPANY,
By B. W. LEWIS, JR., *President.*

Attest:
[SEAL.] JAMES F. HOW, *Secretary.*

GEORGE I. SENEY. [SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this twenty-first day of July, A. D. 1879, before me, the undersigned, a notary public within and for the city and county of St. Louis and State of Missouri, came B. W. Lewis, Jr., president, and James F. How, secretary, of the St. Louis, Kansas City and Northern Railway Company, who is [are] personally known to

me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be the act and deed of the said company, by them as president and secretary of said St. Louis, Kansas City and Northern Railway Company, party thereto, and that they affixed the seal of said corporation thereunto by authority of said company, and severally acknowledge that they executed the same as the act and deed of said corporation for the purposes therein mentioned, and that the seal so affixed is the corporate seal of said company; and I further certify that I was qualified as notary public aforesaid on the 13th day of March, A. D. 1876, and that my official term expires on the 9th day of March, A. D. 1882. In testimony whereof I have hereunto set my hand and affixed my official seal this the 21st day of July, in the year of our Lord one thousand eight hundred
25 and seventy-nine.

[SEAL.] GEO. S. GROVER,
Notary Public, St. Louis City and County.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it known that on the fifteenth day of July, in the year one thousand eight hundred and seventy-nine, before me, the undersigned, a notary public for the city and county of New York and State aforesaid, appeared George I. Seney, who is to me personally known to be the person who executed the foregoing instrument, and acknowledged that he executed and delivered the same freely and voluntarily for the uses and purposes therein expressed.

Witness my hand and notarial seal on this fifteenth day of July, in the year one thousand eight hundred and seventy-nine.

[SEAL.] W. H. CONNELL,
Notary Public, N. Y. Co.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Hubert O. Thompson, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that W. H. Connell, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof and acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same, and further that I am well acquainted with
26 the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court and county the 15th day of July, 1879.

HUBERT O. THOMPSON, *Clerk.*

STATE OF IOWA, } ss:
Page County, }

I, Thos. C. Beard, register of deeds for Page county, Iowa, hereby certify that the foregoing is a full, true, and exact copy of a mortgage or deed of trust recorded in Book 27, at page 393, of the Mortgage Records of this county.

Witness my hand, at Clarinda, Ia., this 20th day of February, A. D. 1886.

T. C. BEARD,
Register of Deeds.

EXHIBIT C.

This deed, made and entered into this 15th day of July, A. D. 1879, by and between the Clarinda and St. Louis Railroad Company, a corporation organized under the laws of the State of Iowa, party of the first part, and George I. Seney, of the city and State of New York, party of the second part, witnesseth:

That whereas the St. Louis, Kansas City and Northern Railway Company has made and executed two hundred and sixty-four bonds bearing date on the 1st day of August, A. D. 1879, each for the sum of one thousand dollars, all of which are made payable to George I. Seney or bearer forty years after said date,
27 for value received, at the National Bank of Commerce, in the city and State of New York, with interest from date at the rate of six per cent. per annum, payable semi-annually on the first days of August and February in each year on the presentation and surrender of the proper annexed coupon, the principal and interest of said bonds being payable in gold coin of the present weight and fineness as fixed by the laws of the United States now in force, which bonds are also exempt from any tax now existing or that may be hereafter provided for by any law of the United States; and

Whereas, under certain agreements with the party of the first part, the said St. Louis, Kansas City and Northern Railway Company is about to raise money by negotiation and sale of said bonds for the purpose of constructing for said party of the first part its certain railroad hereinafter mentioned and conveyed; and

Whereas the St. Louis, Kansas City and Northern Railway Company is the owner of a branch line of railroad extending in a northerly direction from a point on the east side of the Nodaway river, in Nodaway county, Missouri, to the boundary line between the States of Missouri and Iowa; and

Whereas the said party of the first part is the owner of a line of railroad, hereinafter described and conveyed, joining, intersecting, and connecting with said line of railroad last hereinbefore described; and

Whereas the party of the first part, by its certain agreement in writing dated on the 15th day of July, A. D. 1879, has leased, demised, and let unto said St. Louis, Kansas City and Northern Railway Company, its successors and assigns, for the full period of

ninety-one years from and after the date of said agreement,
28 the entire line of its railroad, as hereinafter described and conveyed, with all the real estate, rights of way, depots, depot grounds, side tracks, engines, cars, and other appurtenances thereunto belonging, together with the right of maintaining and operating said railroad and regulating, fixing, collecting, and receiving all freights, tolls, and charges for the use thereof or for the transportation of freights, passengers, and property upon or over the same; and

Whereas the lines of railroad aforesaid will, when completed, constitute and form one continuous line of railroad, commencing on the main line of the Omaha Division of the St. Louis, Kansas City and Northern railway at a point on the east side of the Nodaway river, in Nodaway county, State of Missouri, and terminating at the town of Clarinda, in the State of Iowa, which said railroad is designated as the Clarinda Branch of the St. Louis, Kansas City and Northern Railway Company; and

Whereas the St. Louis, Kansas City and Northern Railway Company, under the agreement last aforesaid, has covenanted to construct, equip, and maintain during the period of said lease the road of said party of the first part; and

Whereas the bonds issued as aforesaid by the St. Louis, Kansas City and Northern Railway Company are in amount equal to twelve thousand dollars per mile for each and every mile of said branch railroad from said point on the east side of the Nodaway river, in Nodaway county, Missouri, to Clarinda, in the State of Iowa; and

Whereas the said St. Louis, Kansas City and Northern Railway Company, for the purpose of securing the prompt payment of the principal and interest of the bonds so issued by it as aforesaid, has executed a mortgage, dated on the 15th day of July, A. D. 1879, upon all its right, title, interest, and estate in and to the whole of said line of railroad, as now owned or leased to it as aforesaid; and

29 Whereas it is to the interest of the party of the first part by whatever additional security it may be able to give to increase the market value of said bonds whenever the same may be negotiated or offered for sale:

Now, therefore, the said party of the first part, in consideration of the premises and for value received and as inducement to such persons as may desire to become purchasers of said bonds to buy the same, does hereby guarantee the payment of each and every one of said bonds issued as aforesaid by said St. Louis, Kansas City and Northern Railway Company and interest on the same as it may become due as aforesaid, to an amount only that on all of said bonds will equal the sum of twelve thousand dollars per mile for each and every mile of railroad owned by said party of the first part, as the same is hereinafter described and conveyed, and to secure the prompt performance of said guaranty and the payment of principal and interest of said bonds to the amount aforesaid, and for the further consideration of one dollar to it paid by said party of the first

part, hath given, granted, bargained, sold conveyed, and confirmed, and by these presents does give, grant, bargain, sell, convey, and confirm, unto said George I. Seney, of New York, all its right, title, interest, and estate in and to all and every part and parcel of its railroad aforesaid, commencing at the town of Clarinda, in the State of Iowa, and extending in a southerly direction through the county of Page, in the State of Iowa, to said boundary line between the States of Iowa and Missouri, with all its rights, privileges, and franchises, together with all the real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, and cars, as the same now is or may hereafter be constructed, maintained, operated, or acquired, with all the other appurtenances thereunto belonging; to have and to hold the property hereby conveyed unto the said George I. Seney, of New York, his successor, successors, or assigns, in trust, as hereinafter described, forever, free and clear of all liens or incumbrances, save and except the said lease and agreement hereinbefore mentioned and executed by the said party of the first part to and with the said St. Louis, Kansas City and Northern Railway Company, dated the 15th day of July, A. D. 1879.

This conveyance is made in trust, however, for the following purposes, to wit:

If the principal of said bonds and the several instalments of interest thereon shall be duly and promptly paid by said St. Louis, Kansas City and Northern Railway Company, its successors or assigns, as the same become due, or should the said St. Louis, Kansas City and Northern Railway Company at any time fail to pay the principal and interest on said bonds as the same becomes due and payable, and if in that event the party of the first part shall promptly perform the guaranty hereinbefore expressed, then this deed shall be void and the property hereby conveyed shall be released at the cost of the said party of the first part; but if the principal of said bonds or any part thereof shall not be paid by the said St. Louis, Kansas City and Northern Railway Company when the same becomes due, or if any instalment of interest upon said bonds or any part thereof is not paid within sixty days after the same becomes due, and payment thereof shall have been demanded at the place of payment designated in the mortgage made by said St. Louis, Kansas City and Northern Railway Company to secure the payment of said bonds, and if, upon such failure or failures, notice thereof shall be given in writing to any officer or agent of the party of the first part or to the trustee herein named or to his successor, successors, or assigns in this trust, and if the party of the first part shall fail for
31 the further period of twenty days after such notice to pay the principal and interest of the bonds aforesaid to the extent to which the same are hereby guaranteed, then, in either of said events, the said George I. Seney, trustee herein, or his successor, successors, or assigns in this trust, shall, whenever requested so to do by the owner or holder of fifty or more of the bonds hereby guaranteed and secured, take possession of said mortgaged property separately or jointly with the trustee in said mortgage or deed of trust executed

as aforesaid by said St. Louis, Kansas City and Northern Railway Company, and during such default he shall manage and control the same and collect and receive all the tolls and income thereof, so far as the party of the first part may be entitled to the same at the time; and upon demand in writing of the holder or holders of fifty or more of said bonds he, the said trustee herein, his successor, successors, or assigns, shall, either separately or, if he deem it more beneficial to the interest of all the parties, then jointly with the said trustee in the aforesaid mortgage of the said St. Louis, Kansas City and Northern Railway Company, proceed to execute this mortgage or deed of trust and sell the property herein and hereby conveyed, at the city of St. Louis, at public auction, to the highest bidder, for cash, after first having — twenty days' notice of the time, terms, and place of such sale by advertisement in at least two daily newspapers published in the city of St. Louis, Missouri, and in one daily newspaper published in the city of New York and State of New York; and upon making such sale said trustee, his successor, successors, or assigns, shall execute to the purchaser or purchasers thereof an absolute deed of the property hereby conveyed, either separately or in conjunction with said trustee in the aforesaid deed of trust of said St. Louis, Kansas City and Northern Railway Company, and
32 said trustee, his successor, successors, or assigns, shall receive the proceeds of the sale hereunder and apply the same as follows:

First. To the payment of the costs and expenses of this trust, including the commission and compensation of said trustee.

Second. To the payment of the principal of said bonds and the interest thereon to the date of sale to the amount and in the proportion of twelve thousand dollars per mile for each and every mile of said railroad hereby conveyed; and in case the proceeds of the said sale are not sufficient to pay the whole of said principal and interest to the date of sale, then said trustee, his successor, successors, or assigns, shall apportion the same *pro rata* to the extent aforesaid upon said bonds.

Third. If, after paying all of said bonds and interest thereon to the extent aforesaid to the date of sale, there shall remain a surplus, said trustee, his successor, successors, or assigns, shall pay the same over to the said party of the first part, its successors or assigns; and said party of the first part, for itself and its successor, successors, or assigns, hereby agrees and covenants that in case of default in the payment of the principal of said bonds or any instalment of interest thereon and failure, upon demand made as aforesaid upon it, to pay the same and duly perform the guaranty hereinabove expressed, it will, upon demand, deliver possession of said railroad and property hereby conveyed to the trustee herein named or to his successor, successors, or assigns, subject only to the lease and agreement aforesaid if the same may then be existing; but it is further expressly understood and agreed by and between the parties hereto that the said party of the first part shall, until such time as default is made as aforesaid, be entitled to have and to hold the possession of said railroad, with all its appurtenances, subject only to the lease

33 aforesaid, to receive any rental that may become due it, and enjoy all its rights, privileges, and franchises in and about said railroad, without interruption or interference by any one by virtue hereof.

And the said party of the second part hereby accepts this conveyance and covenants to perform the trust hereby vested in him according to the terms of this deed and the bonds and guaranty aforesaid.

In case a vacancy shall occur in this trust from any cause whatever, then a new trustee or trustees may be appointed by any court of competent jurisdiction upon the application of the holder or holders of fifty or more of the bonds hereby guaranteed and secured, and such court may, by its order and decree, vest in such trustee or trustees so appointed all the authority, estate, and powers possessed under this instrument by the trustee herein named; and said party of the first part does hereby further agree that nothing herein contained shall be held or construed to interfere with the foreclosure of this mortgage or the appointment of a receiver or any other act or proceeding ordinary or customary in such case by any court of competent jurisdiction.

The guaranty hereinbefore expressed and the execution of this conveyance are made with the written assent of more than three-fourths in interest of all the stockholders of said party of the first part, which assent is of record in the books of said company.

In testimony whereof the said Clarinda and St. Louis Railroad Company has caused its seal to be hereunto affixed and these presents to be subscribed by its president and secretary on this fifteenth day of July, A. D. 1879; and the said George I. Seney, trustee herein, has also signed these presents and attached his seal
34 hereto, in signification of his acceptance of the trust herein created.

CLARINDA AND ST. LOUIS RAILROAD COMPANY,
By B. W. LEWIS, JR., *President.*

Attest:

[SEAL.] JAMES F. HOW, *Secretary.*

GEO. I. SENEY. [L. S.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this 21st day of July, A. D. 1879, before me, the undersigned, a notary public within and for the city and county of St. Louis and State of Missouri, came B. W. Lewis, Jr., president, and James F. How, secretary, of the Clarinda and St. Louis Railway Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be the act and deed of the said company by them as president and secretary of said Clarinda and St. Louis Railroad Company,

party thereto, and that they affixed the seal of said corporation thereunto by authority of said company, and severally acknowledged that they executed the same as the act and deed of said corporation for the purposes therein mentioned, and that the seal so affixed is the corporate seal of said company; and I further certify that I was qualified as notary public aforesaid on the 13th day of March, A. D. 1876, and that my official term expires on the 9th day of March, A. D. 1882.

In testimony whereof I have hereunto set my hand and affixed my official seal this 21st day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] GEO. S. GROVER,
Notary Public, St. Louis City and County, Missouri.

35 STATE OF NEW YORK, } ss:
City and County of New York, }

Be it known that on the fifteenth day of July, in the year one thousand eight hundred and seventy-nine, before me, the undersigned, a notary public for the city and county of New York and State aforesaid, appeared George I. Seney, who is to me personally known to be the person who executed the foregoing instrument, and acknowledged that he executed and delivered the same freely and voluntarily for the uses and purposes therein expressed.

Witness my hand and notarial seal this fifteenth day of July, in the year one thousand eight hundred and seventy-nine.

[SEAL.] W. H. CONNELL,
Notary Public, N. Y. Co.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Hubert O. Thompson, clerk of the city and county of New York, and also clerk of the supreme court of said city and county, the same being a court of record, do hereby certify that W. H. Connell, whose name is subscribed to the certificate in the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof and acknowledgment, a notary public in and for the city and county of New York, dwelling in said city, commissioned and sworn and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and
36 affixed the seal of the said court and county the fifteenth day of July, 1879.

[SEAL.] HUBERT O. THOMPSON, *Clerk.*

Recorded July 29, 1879, in Page county, Iowa, Book 27, page 386.

EXHIBIT D.

In the Circuit Court of the United States for the Eastern District of Missouri.

CENTRAL TRUST COMPANY OF NEW YORK *et al.* *against* WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } Consolidated Cause.

Order on Receivers to Transfer the Clarinda Branch of the St. Louis, Kansas City and Northern Railway to George I. Seney, as Trustee.

APRIL 6, 1886.

Now, on this day, comes George I. Seney, as trustee, by his solicitors, and represents to the court that he is the trustee under a certain mortgage or deed of trust executed by the St. Louis, Kansas City and Northern Railway Company on July 15th, 1879, to secure certain bonds, commonly known as "Clarinda Branch bonds," of which there are now outstanding $264,000, said bonds bearing interest at the rate of six per cent. per annum, payable semi-annually; that said railway company and its successor, the Wabash, St. Louis and Pacific Railway Company, defaulted in the payment of the interest falling due upon said bonds on February 1st, 1885, and
37 a like instalment falling due August 1st, 1885, and another like instalment falling due February 1st, 1886, and that such defaults continue, no interest upon said bonds having been paid since August 1st, 1884. The said mortgage embraces and covers a line of railroad of the said Wabash, St. Louis and Pacific Railway Company extending from the east side of the Nodaway river, in the county of Nodaway and State of Missouri, to the town of Clarinda, in the county of Page and State of Iowa, said railroad being of the length of about twenty-one miles.

And the said George I. Seney, as trustee, having prayed the court for an order directing the receivers to surrender to him, as such trustee as aforesaid, the possession and control of the said railroad and property embraced in and covered and conveyed by the said mortgage, with leave to institute in the State courts proper actions for the foreclosure of the said mortgage, and to cause the same to be removed into the Federal courts and the appointment therein of a separate receiver for the management and operation of the said railroad, as provided in said mortgage; and the receivers appointed by this court, The Central Trust Company of New York and James Cheney, trustees, and all other persons and parties interested in said motion being represented in open court by their several solicitors and being duly advised of the said motion, and the court having considered said motion and being advised in the premises, it is now hereby ordered that the said receiver do, within ten days from and after the filing of this order, transfer to Thomas McKissock, receiver,

over the Omaha Division of the Wabash, St. Louis and Pacific railway, the entire line of railroad hereinbefore described and known as the Clarinda Branch of the Wabash, St. Louis and Pacific railway, and also all the property, real and personal, pertaining to said branch and now in their possession and control: Provided, that, inasmuch as the rolling stock and equipment claimed to be
38 covered by and conveyed by the said mortgage has been used indiscriminately with the rolling stock and equipment belonging to other branches of the railway and inasmuch as an equitable apportionment of rolling stock and equipment will be made as hereinafter provided, it is further ordered that, for the time being and until a final distribution and apportionment of rolling stock and equipment is made to said Clarinda Branch, the receivers shall, until otherwise ordered, permit said Thomas McKissock, receiver, to have the use of such rolling stock and equipment in kind and amount as has been needed in the business of the said Clarinda Branch during the three months last past.

It is further ordered that the matter of the division and equitable apportionment of the rolling stock and equipment between said Clarinda Branch and said Wabash, St. Louis and Pacific Railway Company be, and the same is hereby, submitted to the circuit court of the United States for the southern district of Iowa for adjudication and settlement by decree.

The surrender and transfer of the property under this order shall not be held to divest this court of jurisdiction of said property in this cause, but the same shall continue to be subject to such jurisdiction until the further order of this court; and upon due notice, by order of this court, the said trustee shall hereafter appear in court in response to any demand or requirement that shall be ordered by the court, this clause of this order to be and remain in force until the further order of this court.

This order shall in no manner prejudice or curtail the right of the said trustee, George I. Seney, to prosecute to final foreclosure decree and sale his proper action or actions for the foreclosure of the said mortgage. He shall also have the right to except to any orders made by this court in this cause concerning him or the said
39 Clarinda Branch covered and conveyed by the said mortgage.

And it is further ordered that the receivers appear in any action or actions in which they are this day authorized to be sued in the United States courts in Iowa and Missouri, respectively, by the said George I. Seney for the foreclosure of the said mortgage, and present for final adjudication any demand they may have as such receivers against said property known as the Clarinda Branch for operating or other expenses, and also as to the portion, if any, of receivers' certificates issued under the orders of this court, for which said property may be justly chargeable in law or equity, and that in said actions in said circuit court of the United States the said receivers answer and litigate to final adjudication any and all claims made against them and in favor of said Clarinda Branch in respect to the credits allowed to said branch by said receivers and any and all

claims and questions pertaining to a full, equitable, and final settlement between said Clarinda Branch, as a separate and several road, and the said Wabash, St. Louis and Pacific Railway Company.

It is further ordered that if it shall be finally determined by the circuit court of the United States for the southern district of Iowa that no rolling stock is included in or covered by said mortgage or in case more shall be used on said line than shall be finally allotted to it, then said line shall be charged with such sum or sums as will be a reasonable compensation for the use of the rolling stock so employed.

On May 25th, 1886, the following answer of Solon Humphreys and Thomas E. Tutt, as receivers, was filed in this cause:

(*Answer of Receivers.*)

In the Circuit Court of the United States for the Eastern District of Missouri.

40 THE CENTRAL TRUST COMPANY OF NEW YORK and JAMES CHENEY, Complainants, *vs.* WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants. } Consolidated Cause.

Separate answer of Solon Humphreys and Thomas E. Tutt, receivers, to the intervening petition of George I. Seney.

Said receivers, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which can or may be had to the many imperfections and uncertainties in said intervening petition contained, for answer thereunto or to so much thereof as they are advised is material for them to make answer unto, answering, say—

That it is not true that they, as receivers of the property of the Wabash, St. Louis and Pacific Railway Company, by any act of theirs or any order of the court by which they were appointed, adopted in whole or in part the covenants and obligations of the lease made by the said Clarinda and St. Louis Railroad Company to the Wabash, St. Louis and Pacific Railway Company on or about the fifteenth day of July, 1879.

These receivers, further answering, say that that they did, pursuant to the order of the court in that behalf duly entered, take charge of and operate the said Clarinda and St. Louis railroad from and after the 29th day of May, 1884, until the 6th day of April, 1886, for the purpose of preserving said property and preventing a forfeiture of the charter thereof.

These receivers further say that at all times after they took charge of and commenced operating said Clarinda and St. Louis railroad they were compelled to expend large sums of money in the main-

tenance and operation thereof in excess of the earnings
41 thereof.

These receivers, further answering, say that the said Clarinda and St. Louis Railroad Company or the intervenor, said George I. Seney, might at any time after the said property had been placed in their charge for the purposes aforesaid have obtained the possession thereof.

Wherefore they say that the petitioner is not entitled to have and recover of them the rents prayed for by his intervening petition or to any other relief whatsoever.

SOLON HUMPHREYS,
THOMAS E. TUTT,
Receivers.

By H. S. PRIEST,
GEO. S. GROVER, *Sol'rs.*

On May 16th, 1887, Edmund T. Allen, Esq., the special master to whom had been referred the foregoing intervening petition, lodged with the clerk of said court in this cause his following report:

(Master's Report.)

In the Circuit Court of the United States for the Eastern District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants, *vs.* WABASH, ST. LOUIS & PACIFIC RAILWAY Company *et al.*, Defendants; George I. Seney, Intervenor.	In Chancery. No. 2357, No. 2464, Consolidated. Master's No., 244. Clerk's No., 1131.

42 To the honorable judges of the United States circuit court for the eastern district of Missouri:

In pursuance of an order of reference to me as special master of this intervening petition, which was filed on April 23rd, 1886, I was present at the witness-room in the Custom-House building, in the city of St. Louis, at 11 a. m. on May 17th, 1886, to hear the evidence, if any, relating to said petition, and the hearing was continued from time to time, as will appear by the record of proceedings herewith filed, until March 1st, 1887, when the intervention was submitted upon the following agreed statement of facts, to wit:

First. That on or about the 15th day of July, 1879, the Clarinda & St. Louis Railroad Company, a corporation existing under the laws of the State of Iowa, demised and leased to the St. Louis, Kansas City & Northern Railway Company, its successors and assigns, for the term of ninety years from the said date, its entire line of railway, then located or thereafter to be constructed, extending from the town of Clarinda, Iowa, in a southeasterly direction through the county of Page, in the State of Iowa, to the boundary line between the States of Iowa and Missouri; a true copy of which said lease is annexed to the intervenor's bill, marked Exhibit A.

Second. That on or about the 15th day of July, 1879, said St. Louis, Kansas City & Northern Railway Company, then being the owners and in possession of a certain line of railway extending from a point east of Nodaway river in a northerly direction to the boundary line between the States of Missouri and Iowa, and being also the lessee and in possession of the line of railway demised in and by the lease named in paragraph one, in order to secure the prompt payment of principal and interest of its 264 bonds, each for the sum of $1,000, and in pursuance of the express provis-
43 ions of the lease, executed to the intervenor its certain mortgage deed wherein and whereby it conveyed to the intervenor in trust all and every part of its continuous line of railroad extending from the east side of Nodaway river, in the county of Nodaway and State of Missouri, to the town of Clarinda, in the county of Page, in the State of Iowa; a true copy of which said mortgage is annexed to the intervenor's bill and marked Exhibit B.

Third. That in accordance with the further terms of said lease and on or about the said 15th day of July, 1879, the said Clarinda & St. Louis Railroad Company, in order to further secure the said 264 bonds and interest thereon, did execute to the intervenor its certain guaranty mortgage deed wherein and whereby it conveyed to the petitioner, as trustee, its said line of railroad extending from the town of Clarinda to the boundary line between the States of Iowa and Missouri; a true copy of which said guaranty mortgage deed is annexed to the intervenor's bill and marked Exhibit C.

Fourth. And upon the execution of said lease the said St. Louis, Kansas City & Northern Railway Company entered upon said demised premises and remained in sole possession thereof until on or about the 16th day of November, 1879, when it became and was consolidated with the Wabash Railway Company under the corporate name of The Wabash, St. Louis & Pacific Railway Company, one of the defendants herein, and that by the terms of said consolidation said Wabash, St. Louis & Pacific Railway Company became and was and is liable upon all the obligations of every kind of the said St. Louis, Kansas City & Northern Railway Company, including its liability upon the lease hereinbefore described, and that immediately upon the consolidation said Wabash, St. Louis & Pacific Railway Company entered upon the sole use and enjoyment of the premises demised by said deed and continued in such use and possession until on or about the 29th day of
44 May, 1884, when, under and by virtue of proceedings had in this case, the defendants, Solon Humphreys and Thomas E. Tutt, were appointed receivers of all the property whatsoever of the said Wabash, St. Louis & Pacific Railway Company, including its rights as lessee under said lease to the possession of said demised premises; and that from and after the last-named date and up to the 16th day of April, 1886, the said receivers had the sole use and possession of the said demised premises.

Fifth. That the semi-annual interest of rent reserved by said lease, being the semi-annual installment of interest upon the bonds therein

described, falling due February 1st, 1885, together with two like installments of rent falling due August 1st, 1885, and February 1st, 1886, has not nor has any part thereof been paid; that there is now due and unpaid upon said lease, as the rent therein reserved from August 1st, 1884, up to and until April 16th, 1886, the sum of $—, which said sum the said receivers refused to pay.

Sixth. That on account of said defaults and said refusals to pay said installments of interest or to voluntarily surrender possession of said demised premises, the intervenor never having demanded the possession thereof, except as hereinafter stated, the intervenor, on or about the 20th day of March, 1886, filed in this cause his certain petition reciting said defaults in the payment of said installments and praying said demised premises be surrendered to him; that said petition was heard before this court on the — day of ——, 1886, and thereupon continued for further action, and subsequently on the sixth day of April, 1886, an order was entered herein directing such surrender upon certain conditions set forth in said order, a copy of which said order is annexed to intervenor's petition and marked Exhibit D; that thereafter Thomas McKissock, by proper proceedings in that behalf, was
45 duly appointed receiver of the said demised road and possession thereof accordingly surrendered to him pursuant to the order last herein named.

Seventh. That no part of the rent reserved by said lease and none of the bonds secured by said mortgage have been paid; that no part of the interest thereon which has matured since August 1st, 1884, has been paid, and that neither intervenor nor any of the holders of said bonds have received any use or benefit from said demised premises between August 1st, 1884, and April 16th, 1886—that is to say, that neither the intervenor nor any of the bondholders have received in any manner or form any rental from said property or any portion of the income therefrom between the dates aforesaid.

Eighth. That neither intervenor nor the bondholders have ever been requested to take possession of said demised property by the receivers, Humphreys and Tutt.

Ninth. It is further stipulated that during the time the said demised railway was in the possession of and being operated by Humpheys and Tutt as receivers they expended in necessary maintenance, operation, and taxes thereupon a large sum in excess of the gross income and earnings arising therefrom.

The prayer of the petition is that the receivers be ordered to pay to the intervenor the amount of the rental above named, and for general relief.

On the 28th day of June, 1884, the court entered in the original cause the following order:

"It is ordered that until otherwise directed the receivers herein, from the incoming rents and profits of said property, after meeting such other obligations as they have been directed to discharge by the former orders of this court, pay from whatever balance may remain in their hands the interest, as the same shall from time to time

mature, upon the following bonds or other obligations secured
46 by mortgage on the several lines or divisions of the 'Wabash Railway Company' and of the 'St. Louis, Kansas City and Northern Railway Company,' before the date of their consolidation under the name of the 'Wabash, St. Louis and Pacific Railway Company,' to wit: * * *

"On the first days of February and August (or as soon thereafter as practicable) the semi-annual interest, at six per cent. per annum, then due on two hundred and sixty-four (264) bonds, of one thousand dollars each, issued in July, 1879, and secured by mortgage on the Clarinda & St. Louis railroad (otherwise known as the Clarinda Branch), amounting to $7,920." * * *

It appears that all the interest maturing upon these bonds prior to February 1st, 1885, has been paid. Presumably the interest accruing, due August 1st, 1884, was paid by the receivers under the impression that such payment was authorized by the order above recited—that is to say, that there were "incoming rents and profits of said property" sufficient, after meeting such other obligations as they had been directed to discharge by the former orders of the court, to pay this interest. Whatever may have led to that payment, the results are, as appears by the receivers' reports on file in this case, that there never was in the receivers' hands any money with which to pay the interest on these bonds maturing August 1st, 1884, in strict compliance with the terms of the order of June 28th, 1884.

So far as appears, the intervenor, as trustee in the mortgage securing the bonds in question, though a party defendant to the original bill filed in this cause, never excepted to the said order of June 28th, 1884. This order, in substance, declared that the receivers should not pay the interest on the bonds in question unless there were incoming rents and profits from the entire property in the hands of the receivers sufficient first to discharge such other obligations as they had been directed to discharge by the former orders of the court.

47 The intervenor, in my opinion, therefore must be regarded as assenting to the conditions of that order, and not entitled to the relief prayed for unless he can bring himself within its conditions. This he has not attempted to do in his petition.

At the March term, A. D. 1885, of this court the receivers prayed instructions in respect of the payment of the interest upon this series of bonds, representing that from May 29th, 1884, to November 30th, 1884, the expenses of operating the property securing them (not including the interest payment of August 1st, 1884) had exceeded its earnings by the sum of $4,624.69.

On the 28th day of March, 1885, an order was entered *nunc pro tunc* as of date March 20th, 1885, requiring the receivers to notify all parties to this cause of an application to be made by them on the 13th day of April, 1885, for "instructions concerning the cancellation or such equitable modifications of said several leases and agreements and for instructions concerning the future operation by them of said several lines of railroad," etc.

On the 16th day of April, 1885, this court responded to the receivers' petition for instructions above referred to in the language reported in vol. II of "Petitions of Receivers, Orders, Reports," etc., etc., on pages 357 and following.

It is unnecessary to quote the instructions then given to the receivers. The substance of them clearly was that the receivers were not to pay rental of or the interest of bonds secured upon leased lines unless the lines earned a surplus over expenses, and then only to the extent of such surplus.

Whether or not the Clarinda & St. Louis Railroad Company, the lessor or the intervenor, excepted to the action of the court last above referred to, it is immaterial at this time to inquire. The instructions then given to the receivers have not, as regards the interest as a rental charge, now under consideration, been rescinded or modified.

48 The court at the same time distinctly stated that the claims of lessors, of subdivisional mortgagees, who desired possession of properties regarding which rental or interest was not paid, would be promptly recognized, and on the 6th day of April, 1886, by its order of that date (vol. V of Petitions, etc., page 93), surrendered the Clarinda & St. Louis railroad to the intervenor, as trustee.

In view, therefore, of the orders of the court above referred to and of the fact appearing in the stipulation above mentioned "that during the time the said demised railway was in the possession of and being operated by Humphreys and Tutt, as receivers, they expended in necessary maintenance, operation, and taxes thereupon a large sum in excess of the gross income and earnings arising therefrom," I respectfully recommend that the petition of the intervenor be denied so far as the prayer thereof relates to the receivers herein, but, if the intervenor so elect, the sum of twenty-seven thousand and sixty dollars be allowed as a general unsecured demand against the Wabash, St. Louis & Pacific Railway Company.

Lodged in the clerk's office May 2nd, 1887.

Intervenor's exceptions to foregoing report were presented to me May 10th, 1887. I see no reason, on account thereof, to change foregoing report.

EDMUND T. ALLEN,
Special Master.

On May 16th, 1887, said special master lodged with said clerk the following record of proceedings had before him upon said intervening petition:

(*Record of Proceedings.*)

49 In the Circuit Court of the United States for the Eastern District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Copmlainants, *vs.* WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants; George I. Seney, Intervenor.	In Chancery. No. 2357, No. 2464, (Consolidated.) Master's No., 244. Clerk's No., 1131.

Record of proceedings before the master.

This petition, which was filed on April 23rd, 1886, was first called for hearing on May 17th, 1886, at which time the intervenor appeared by Theodore Sheldon, Esq., and the receivers by Messrs. Priest and Grover, and the hearing was adjourned until 11 a. m. May 31st, 1886.

Pursuant to adjournment, as above stated, on May 31st, 1886, the receivers appeared, by George S. Grover Esq., no one appearing for the intervenor, and the hearing was adjourned until 11 a. m. June 14th, 1886.

Pursuant to adjournment, as above stated, on June 14th, 1886, the receivers appeared, by George S. Grover, Esq., the intervenor not appearing, and the hearing was adjourned until 11 a. m. July 6th, 1886.

Pursuant to adjournment, as above stated, on July 6th, 1886, the matter was again called for hearing, and, none of the parties being present, the hearing was adjourned until 11 a. m. July 12th, 1886.

Pursuant to adjournment, as above stated, on July 12th, 1886, the receivers appeared by H. S. Priest, Esq., no one appearing for the intervenor, and the hearing was adjourned until 11 a. m. August 2nd, 1886.

50 Pursuant to adjournment, as aboved stated, on August 2nd, 1886, the matter was again called for hearing, and, none of the parties being present, the hearing was adjourned until 11 a. m. September 6th, 1886.

Pursuant to adjournment, as above stated, on September 6th, 1886, the receivers appeared by George S. Grover, Esq., the intervenor not appearing, and the hearing was adjourned until 11 a. m. October 4th, 1886.

Pursuant to adjournment, as above stated, on October 4th, 1886, the receivers appeared by George S. Grover, Esq., the intervenor not appearing, and the hearing was adjourned until 11 a. m. October 11th, 1886.

Pursuant to adjournment, as above stated, on October 11th, 1886, the receivers appeared by George S. Grover, Esq., the intervenor not appearing, and the hearing was adjourned until 11 a. m. November 1st, 1886.

Pursuant to adjournment, as above stated, on November 1st, 1886, the receivers appeared by George S. Grover, Esq., the intervenor not appearing, and the hearing was adjourned until 11 a. m. December 6th, 1886.

Pursuant to adjournment, as above stated, on December 6th, 1886, the receivers appeared by George S. Grover, Esq., the intervenor not appearing, and the hearing was adjourned until 11 a. m. January 3rd, 1887.

Pursuant to adjournment, as above stated, on January 3rd, 1887, the receivers appeared by George S. Grover, Esq., the intervenor not appearing, and the hearing was adjourned until 11 a. m. January 31st, 1887.

Pursuant to adjournment, as above stated, on January 31st, 1887, the receivers appeared by H. S. Priest, Esq., the intervenor not appearing, and the hearing was adjourned until 11 a. m. February 28th, 1887.

51 Pursuant to adjournment, as above stated, on February 28th, 1887, the intervenor appeared by Theodore Sheldon, Esq., and the receivers by George S. Grover, Esq., and the hearing was adjourned until 11 a. m. March 1st, 1887.

Pursuant to adjournment, as above stated, on March 1st, 1887, the intervenor appeared by Theodore Sheldon, Esq., and the receivers by H. S. Priest, Esq., and the following agreement was made:

The following facts are agreed to in lieu of the introduction of testimony between the solicitors of the intervenor and those of Humphreys and Tutt, receivers:

First. That on or about the 15th day of July, 1879, the Clarinda & St. Louis Railroad Company, a corporation existing under the laws of the State of Iowa, demised and leased to the St. Louis, Kansas City & Northern Railway Company, its successors and assigns, for the term of ninety years from the said date, its entire line of railway then located or thereafter to be constructed extending from the town of Clarinda, Iowa, in a southeasterly direction through the county of Page, in the State of Iowa, to the boundary line between the States of Iowa and Missouri; a true copy of which said lease is annexed to the intervenor's bill, marked Exhibit A.

Second. That on or about the 15th day of July, 1879, said St. Louis, Kansas City & Northern Railway Company, then being the owners and in possession of a certain line of railway extending from a point east of Nodaway river in a northerly direction to the boundary line between the States of Missouri and Iowa and being also the lessee and in possession of the line of railway demised in and by the lease named in paragraph one, in order to secure the prompt payment of principal and interest of its 264 bonds,

52 each for the sum of $1,000, and in pursuance of the express provisions of the lease, executed to the intervenor its certain mortgage deed wherein and whereby it conveyed to the intervenor

in trust all and every part of its continuous line of railroad extending from the east side of Nodaway river, in the county of Nodaway and State of Missouri, to the town of Clarinda, in the county of Page, in the State of Iowa; a true copy of which said mortgage is annexed to the intervenor's bill and marked Exhibit B.

Third. That in accordance with the further terms of said lease and on or about the said 15th day of July, 1879, the said Clarinda & St. Louis Railroad Company, in order to further secure the said 264 bonds and interest thereon, did execute to the intervenor its certain guaranty mortgage deed, wherein and whereby it conveyed to the petitioner, as trustee, its said line of railroad extending from the town of Clarinda to the boundary line between the States of Iowa and Missouri, a true copy of which said guaranty mortgage deed is annexed to the intervenor's bill and marked Exhibit C.

Fourth. And upon the execution of said lease the said St. Louis, Kansas City & Northern Railway Company entered upon said demised premises and remained in sole possession thereof until on or about the 10th day of November, 1879, when it became and was consolidated with the Wabash Railway Company under the corporate name of The Wabash, St. Louis & Pacific Railway Company, one of the defendants herein, and that by the terms of said consolidation said Wabash, St. Louis & Pacific Railway Company became and was and is liable upon all the obligations of every kind of the said St. Louis, Kansas City & Northern Railway Company, including its liability upon the lease hereinbefore described, and that immediately upon the consolidation said Wabash, St. Louis & Pacific Railway Company entered upon the sole use and enjoyment of the premises demised by said deed and continued in such use
53 and possession until on or about the 29th day of May, 1884, when under and by virtue of proceedings had in this case the defendants, Solon Humphreys and Thomas E. Tutt, were appointed receivers of all the property whatsoever of the said Wabash, St. Louis & Pacific Railway Company, including its rights as lessee under said lease to the possession of said demised premises, and that from and after the last-named date and up to the 16th day of April, 1886, the said receivers had the sole use and possession of the said demised premises.

Fifth. That the semi-annual interest of rent reserved by said lease, being the semi-annual installment of interest upon the bonds therein described falling due February 1st, 1885, together with two like installments of rent falling due August 1st, 1885, and February 1st, 1886, has not nor has any part thereof been paid; that there is now due and unpaid upon said lease as the rent therein reserved from August 1st, 1884, up to and until April 16th, 1886, the sum of $——, which said sum the said receivers refused to pay.

Sixth. That on account of said defaults and said refusals to pay said installments of interest or to voluntarily surrender possession of said demised premises, the intervenor never having demanded the possession thereof except as hereinafter stated, the intervenor, on or about the 20th day of March, 1886, filed in this cause his certain petition reciting said defaults in the payment of said installments,

and praying said demised premises be surrendered to him; that said petition was heard before this court on the — day of ——, 1886, and thereupon continued for further action, and subsequently on the sixth day of April, 1886, an order was entered herein directing such surrender upon certain conditions set forth in said order, a copy of which said order is annexed to intervenor's petition
54 and marked Exhibit D; that thereafter Thomas McKissock, by proper proceeding in that behalf, was duly appointed receiver of the said demised road and possession thereof accordingly surrendered to him pursuant to the order last herein named.

Seventh. That no part of the rent reserved by said lease and none of the bonds secured by said mortgage have been paid; that no part of the interest thereon which has matured since August 1st, 1884, has been paid, and that neither intervenor nor any of the holders of said bonds have received any use or benefit from said demised premises between August 1st, 1884, and April 16th, 1886—that is to say, that neither the intervenor nor any of the bondholders have received in any manner or form any rental from said property or any portion of the income therefrom between the dates aforesaid.

Eighth. That neither intervenor nor the bondholders have ever been requested to take possession of said demised property by the receivers, Humphreys and Tutt.

Ninth. It is further stipulated that during the time the said demised railway was in the possession of and being operated by Humphreys and Tutt, as receivers, they expended in necessary maintenance, operation, and taxes thereupon a large sum in excess of the gross income and earnings arising therefrom.

Case submitted.

EDMUND T. ALLEN,
Special Master.

On May 16th, 1887, the intervenor filed in this cause the following exceptions to said master's report, which said exceptions had been, prior thereto, presented to said master and by him overruled:

(*Exceptions to Master's Report.*)

55 Circuit Court of the United States, Eastern District of Missouri. In Equity.

CENTRAL TRUST COMPANY OF NEW YORK *et al.*
against
WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*
} Consolidated Cause. Master's No., 244. Clerk's No., 1131.

In re intervening petition of George I. Seney for recovery of arrears of rental upon the Clarinda Branch.

And now comes the intervenor, George I. Seney, by his solicitors, and excepts to the report of E. T. Allen, Esq., master in chancery, for the following reasons:

1. Because said master fails to find that the defendants, Hum

p'rey and Tutt, as receivers herein, are liable to intervenor for the rental accruing under the lease of the Clarinda Branch during the period the same was in their possession.

2. Because said master construes the order of June 28, 1884, as precluding the relief prayed for by the intervenor, when in fact said order actually directs the receivers to pay the rental herein sought to be recovered.

3. Because said master finds this intervenor bound by said order of June 28, 1884, when in fact this intervenor then was not nor was he until January 24, 1885, a party defendant to the original or other bill filed in this cause, all of which fully appears from the record herein.

4. Because the conclusions of law reached by said master whereby he denies the prayer of the intervenor's petition are erroneous.

5. Because said master finds as a conclusion of law that
56 the intervenor is not entitled to the relief prayed for, because said Clarinda Branch during the term the same was in the possession of the receivers failed to earn any sum in excess of operating expenses.

Wherefore and for other errors in said report appearing intervenor prays these his exceptions be sustained and the entry of a decree as prayed in his said intervening petition.

STEWART & SHELDON,
Solicitors for Intervenor.

THEODORE SHELDON, *Of Counsel.*

On the 19th day of March, 1888, the said court, upon the hearing of said intervening petition and said exceptions, delivered the following opinion:

57 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants, *vs.* THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.	Consolidated Cause. Nos. 2357 and 2464. In Equity.

Opinions In re Intervening Petitions of Theodore Gilman and Charles H. Bull, Trustees, George I. Seney, Trustee, and St. Joseph & St. Louis Railroad Company.

MARCH 19, 1888.

BREWER, *C. J.:*

These are three intervening petitions in each of which is presented the question of liability for rentals during the receivership. The master denied the petitions, exceptions were duly taken, and the question is now before us on these exceptions.

The first two cases are so nearly alike that the statement
58 of the facts in one will bring the question clearly before us. In August, 1879, the Quincy, Missouri and Pacific Railroad

Company leased its road to the Wabash Railroad Company for a period of ninety-nine years. By subsequent consolidations the Wabash Railway Company became merged into the Wabash, St. Louis and Pacific Railway Company. The latter company, of course, succeeded to all the obligations of the former. The conditions of the lease material to this inquiry were substantially that the lessee would pay taxes and keep the road in repair and also pay as rental a given percentage of the gross earnings, guaranteeing that such percentage should at all times be equal to the interest at six per cent. on the bonds of the lessor company issued at the rate of $9,000 per mile. At the beginning of the receivership the outstanding bonds of the lessor amounted to $1,204,000. Gilman and Bull were the trustees in these bonds, and the intervening petition was filed by them as well as by the Quincy Railway Company.

On the 29th of May, 1884, the Wabash, St. Louis and Pacific Railway Company filed its bill in this court confessing its insolvency and praying the appointment of receivers. This bill showed that the complainant's property was a system made up by the consolidation of various independent lines, some of which were taken in by lease and some by purchase; that nearly all of these independent lines were subject to underlying and prior separate mortgages. It also showed the two general mortgages, one on the system as consolidated and the other on terminal facilities and certain other properties. It averred that the value of these properties consisted largely in the preservation of the system intact, and that to permit the breaking up of the system by separate foreclosures of these underlying mortgages would largely impair the value of the properties. It made the lessor companies party defendant. It prayed, among other things—

59 "That after paying such claims as were required to be paid in order to prevent a forfeiture of orator's rights and interests in all rolling stock and equipments, the residue or surplus of all incomes, revenues, and earnings of said railroads and all other assets coming into their hands as such receivers be applied to the discharge of all debts, obligations, and liabilities of orator, according to the rights and legal and equitable priorities of all concerned as creditors or otherwise under the direction of the court."

The order appointing the receivers directed them to take possession of all these lines of road merged in this one system, and also as follows:

"It is further ordered that the said receivers, out of the income that shall come into their hands from the operation of said railroad or otherwise, proceed to pay all balances due or to become due to other railroads or transportation companies on balances growing out of the exchange of traffic accruing during six months prior hereto.

That said receivers also in like manner pay all rentals accrued or which may hereafter accrue upon all leased lines of said complainant, and for the use of all terminals or track facilities, and all such rentals or installments as may fall due from said complainant for the use of any portion of road or roads or terminal facilities of any

other company or companies, and also for all rentals due or to become due upon rolling stock heretofore sold to complainant and partially paid for.

That said receivers also pay in like manner, out of any incomes or other available revenues which may come into their hands, all just claims and accounts for labor, supplies, professional services, salaries of officers and employés that had been earned or have matured within six months before the making of this order.

It is further ordered that said receivers pay all current ex-
60 penses in the operation of said road, collect all the revenues thereof, and all choses in action, accounts, and credits due and to become due to the company.

That such receivers keep such accounts as may be necessary to show the source from which all such income shall be derived with reference to the interest of all parties herein and the expenditures by them made."

In pursuance of this order the receivers took possession of the Quincy road with the other properties. On the 26th of June, 1884, the receivers filed their petition in the court asking its instructions as to how they should dispose of the earnings of certain lines, among them the Quincy road, which lines they believed did not earn enough to pay operating expenses and rental, and on the 28th of June an order was entered as follows:

"3d. It is further ordered that the receivers herein, until otherwise directed, keep the accounts of all the earnings and incomes from as well as the accounts of all the operating expenses, costs of maintenance, and taxes upon the following lines or divisions of said property, separately, to wit."

On the 15th of October, 1884, upon the report of the master recommending that the receivers be directed to pay interest on a certain division, the court in granting the order made this announcement:

"The COURT: I stated at an early day, and Judge Brewer has gone over that matter (and we are in accord with regard to it), that I am not going to take the money that belongs to the underlying mortgages to pay interest on non-earning branches. If they have got to fail they must fail. I will protect the underlying mortgages especially, and they haven't got enough here to do it.

Mr. SMITH: Then I ask that the matter be referred to the master, and we will introduce testimony showing the actual earnings of the road in the past three months.

61 The COURT: That is the important element. If this branch is earning enough to pay its own interest, that is another inquiry; but certainly I am not going to sit here and order that the earnings that belong to other branches in this consolidated system shall be taken to pay concerns that do not pay earning expenses. Let them collapse."

And on April 16th, 1885, after receiving the reports of the receivers in respect to several lines, the Quincy road among them, and after notice to the various parties in interest, an order was entered to this effect:

"1st. That the subdivisional accounts must be kept separately.

That was an order,' said the court, 'passed by Brother Treat at the very outset of this receivership, in order that the particular equities of each one of these divisions, as between themselves, might be ascertained.'

"2d. Where any subdivision earns a surplus over expenses, the rental or subdivisional interest will be paid to the extent of the surplus, and only to the extent of the surplus.

"3d. Where a subdivision earns no surplus, simply pays operating expenses, no rent or subdivisional interest will be paid. If the lessor or the subdivisional mortgagee desires possession or foreclosure he may proceed at once to assert his rights, while the court will continue to operate such subdivision until some application be made; yet the right of a lessor or mortgagee whose rent or interest is unpaid to insist upon possession or foreclosure will be promptly recognized.

"4th. Where a subdivision not only earns no surplus, but fails to pay operating expenses, as in the St. Joseph and St. Louis Branch, the operation of the subdivision will be continued, but the extent of the operation will be reduced with an unsparing though a discriminating hand."

And on July 15th, 1885, the court, on the application of the
62 trustees, Gilman & Bull, made an order directing the receivers to surrender the Quincy road to them, which was done. As a matter of fact, the earnings of the Quincy road during time it was in the hands of the receivers were insufficient to pay the operating expenses, and at the time the receivers took possession of the property there was due by the company of floating debts, which by the rulings of the supreme court were preferential debts and entitled to payment prior to the mortgages, over three millions of dollars. The gross receipts of the entire system during the receivership were insufficient to pay the operating expenses and discharge all of this floating and preferential indebtedness, and the purchasers, in addition to the sum bid by them, have, as required by the orders of this court, paid the balance of said preferential and floating indebtedness. The purchasers have taken possession of the property within the jurisdiction of this court, though it is true the court, in the order surrendering possession, reserved the right to retake it if the purchasers failed to pay all claims and demands which should be adjudged prior in lien to the mortgages. The intervenors' claim, of course, is that the rentals due them are preferential debts and should be paid prior to the mortgages. I believe these facts present the question fully.

We start with this fact, that prior to the appointment of the receivers intervenors' claim was subordinate to that of the mortgagees. It was a claim, of course, good against the income, but not against the *corpus*—at least not good against the *corpus* until after the payment of the mortgages; and the first question is whether the action of the receivers in taking possession or of the court in ordering possession changed the status and gives to intervenors' claim a higher position than it theretofore had. It is strenuously insisted by intervenors that it did, and they say that by taking possession of

this leased property the receivers became virtually the as-
63 signees of the lease, and therefore bound by its terms, and bound to an extent which binds the property in preference to the lien of the mortgagees. A multitude of citations are made from the text books and decided cases to the effect that where a mortgagee institutes foreclosure proceedings and upon his application a receiver is appointed and such receiver takes possession of property leased by the mortgagor, such taking of possession is an acceptance of the lease and binds the receiver as assignee, and binds so as to concede a preference to the lessor in respect to his rental. In other words, if A, a mortgagee, commences foreclosure proceedings against B, a mortgagor, and a receiver appointed at his instance takes possession of the property of C leased by B, such possession of the leased property is an acceptance by the receiver of the lease, makes him an assignee of the lessee, and binds both him and A, the mortgagee, to the full amount of the mortgaged property to the payment of the rents.

High thus states the rule:

"As a rule, receivers are not liable upon the covenants of the persons over whose effects they are appointed, but become liable solely by reason of their own acts; and receivers who have been appointed over a corporation and who have accepted the trust and taken possession of the assets do not thereby become liable for rent of the premises held by the company under a lease.

"Nor can they be held liable until they elect to take possession of the premises or until the doing of some act which would in law be equivalent to such an election; but when a receiver enters upon and occupies premises which had been leased to a corporation over which he is appointed, he thereby becomes liable for the rent due under the lease, the liability in such cases being the common-law liability of an assignee of a lease, and not for the debt due from
64 the corporation; and in such case, the facts being undisputed, it is proper for the court to direct the receiver to make payment to the lessor without a reference to determine the matter."

High on Receivers (2d ed.), sec. 273.

This proposition, fortified as it is by ample citations, is conceded, but is it applicable? This receivership was upon the application of the mortgagor—a party in possession of various properties, some owned, some leased, and all subject to various obligations. Could the action of the mortgagor or the decision of the court upon his application change the relative rights of the mortgagee and the lessor? Was it in the power of the court, upon the application of the mortgagor alone, to charge the mortgagee with obligations to which he never assented?

That this bill was filed by the mortgagor is, of course, conceded, and that its theory was not the preservation of any single creditor's rights, but that of all its creditors, secured and unsecured, is evident from these extracts from the bill:

"That all or nearly all of said mortgages embraced all rolling stock to be thereafter acquired by the companies executing such

mortgages, but that as such original companies and those lines of railroad have been gradually absorbed in orator's vast system the rolling stock on said entire system has become so intermingled as to be incapable of division according to the original ownership of the said several lines of roads according to said several mortgages, and any attempt to control or dispose of portions of such rolling stock by any court or courts not having jurisdiction of the whole and not competent to deal with orator's entire property as a unit would produce great confusion and uncertainty, and would result to great loss to all persons interested in said rolling stock or in orator's property or securities; * * * and orator avers that the in-
65 terest of the orator in said road and of all its creditors and holders of the bonds aforesaid are greatly imperiled by the existing prospect of the disruption of said road on the happening of the default impending as aforesaid, and the interests of all parties can only be protected by the interposition of a court of chancery; that if said lines of railroad are broken up as aforesaid and the fragments thereof placed in the hands of various receivers and the rolling stock, materials, and supplies seized and scattered abroad in the manner above indicated the result will produce irreparable injury and damage, not merely to orator, but to all persons having any interest in said lines of road and the securities thereof."

The idea which underlies this bill is that which underlies the action of a voluntary bankrupt under the bankrupt law. Finding himself insolvent, he surrenders his property to the court to be disposed of for the benefit of his various creditors. Such action in no manner changes the relative rights of his various creditors. They stand subsequent to this action as they did before, and their various right and equities are determined, not by his action in surrendering his property to the custody of the court, but by the terms and obligations of the contracts theretofore entered into. Narrow the question in this way: Suppose A is the owner of a mill and the lessee of an adjacent farm. Having mortgaged both his mill and his leasehold interest and finding himself insolvent, he applies to the court by bill for the appointment of a receiver to take possession of his property and dispose of it for the benefit of his creditors. Can it be that his action in filing the bill or the action of the court in appointing a receiver makes the claim for rental an unsecured obligation paramount to the secured lien of the mortgage? The proposition will be startling if true. It would put it in the power of a mortgagor to dispossess the vested lien of the mortgagee and
66 render such lien subordinate to unsecured claims. It is true that after the appointment of a receiver the mortgagee came in with an application for a foreclosure, but the assertion of his rights to a foreclosure was not different from that of the assertion of the lessor to his claim for rent. Each took what rights were given him by his prior contract and neither by his action waived any of his rights or consented to a subordination of his priority. It is true also that the holder of the general mortgage prayed the court to extend the receivership over a part of the property to it as a mortgagee. Perhaps if that application had been granted some different

question might now arise, but the court expressly decided against the application leaving the receivership to stand as it was in the first instance; one granted on the application of the mortgagor and one whose appointment it was believed would in no manner change the relative rights of any creditor. It may be said that the theory of the bill was novel; that seldom it is that the mortgagor—the debtor—applies for a receivership. This may be true, though this is not the first instance in the judicial history of this country that such an application has been made and sustained. The New York and New England road was upon a like application placed by the circuit court of Connecticut in the hands of a receiver, and in bankrupt cases, though that was specially authorized by statute, such a proceeding was common; but the question is not now upon the propriety of the action of the court in appointing a receiver on the application of the mortgagor, but upon the effect of such action. The propriety of this proceeding was long since challenged in this court and its opinion, with the concurrence of both judges, was in favor of its propriety and validity. That question being settled, it would seem to be logical and necessary that no action of the court at the instance of the mortgagor, no action of the receivers in direct obedience to the orders of the court, could change the relative rights of the creditors *inter sese*.

67 Again, if the action of the court in making the appointment and of the receivers in taking possession did not of itself create a new and legal obligation against the mortgagees, are there any equitable reasons why the claim of the lessor should be given priority to that of the mortgagee? The lessor was defendant as well as the mortgagee. Each knew his rights; each summoned into court was at liberty to assert his rights; neither was told directly or by implication that he would gain aught by the action of the court in making the appointment. As the mortgagee might come in and did come in asking foreclosure of his mortgage, so the lessor might come in, and many did, demanding the surrender of the leased property for non-payment of rent. These very intervenors after the lapse of some months came in and asked possession of their property, which was promptly surrendered. Why should the mortgagee be compelled to pay the lessor any more than the lessor be compelled to pay the mortgagee? Each was summoned into court, each was called upon to make a showing of its claim, and each did so in time and manner that suited it. Because there were various properties covered by separate mortgages, all merged in one system, and as such covered by one subordinate mortgage, is there any equitable reason why the court, seizing upon all of the properties at the instance of the common debtor, can be said to have created any new and different equities between these various creditors? Did not each stand upon his legal rights, rights as they existed before the receivership and rights which could be asserted at any time and were in fact asserted as soon as each party saw fit? There was certainly nothing in the action of the court or the various orders made by it which gave to any party the right to expect other than his legal claims. Of course the order in the first instance was to pay rentals

out of the income, and that income, as we have seen, is all exhausted in preferential debts and operating expenses. Early in the
68 history of receivership the order of the court was to keep separate accounts of the earnings of the different lines, and the clear intimation of all the orders and opinions, as well as the express language of many, was that the income from any property, part of the general system, would be appropriated to the specific claims upon that property. It is undoubtedly true in railroad foreclosures that by the decisions of the Supreme Court certain claims have been adjudged preferential and superior to mortgage and secured liens. So far as these rulings have been made, this court has unhesitatingly followed them, but it cannot be that the security of a mortgage deed, even if it be a railroad mortgage, is open to displacement by every unsecured creditor. Only the cogent public reasons which have been so carefully considered and well stated by the Supreme Court justify any postponement of the priority of a mortgage debt. So far as I am individually concerned, I am unwilling to go a step beyond the matters and rules laid down by the Supreme Court. As to all outside of those matters, I believe the sacredness of mortgage obligations should be observed and that secured debts should be given the priority which the contracting parties awarded to them. In that view the claims of the intervenors in respect to the Quincy road and the St. Joseph and St. Louis road are without foundation, and the exceptions to the master's report will be overruled.

With respect to the claim of George I. Seney, the trustee in the mortgage upon the Clarinda Branch, a somewhat different state of facts existed.

On June 28th, 1884, upon the petition of the receivers and the representations by them that the Clarinda Branch was important to the system and had earned more than operating expenses, the master recommended an order which was duly entered by the court as follows:

"It is ordered that until otherwise directed the receivers herein, from the incoming rents and profits of said property, after
69 meeting such other obligations as they have been directed to discharge by the former orders of this court, pay, as the same shall from time to time mature, from whatever balance may remain in their hands, * * * on the first days of February and August (or as soon thereafter as practicable), the semi-annual interest at six per cent. per annum, then due on two hundred and sixty-four (264) bonds of one thousand dollars each issued in July, 1879, and secured by mortgage on the Clarinda and St. Louis railroad (otherwise known as the Clarinda Branch), amounting to $7,920."

The intervenor, though made a party defendant, entered his appearance and first became a party to the proceeding on Jan. 4, 1885. He was notified by the receivers of an application for a new order in respect to the Clarinda Branch, which was entered upon April 16th. The rental was, in fact, paid to August 1, 1884. Now the rental from August 1, 1884, to April 16, 1885, stands, we think, upon a different footing. There was an express order of the court in reference to that branch and couched in such language that the inter-

venor had a right to rely upon it and expect the payment of his rent until some other order was made. Wherever a specific order is entered after showing and petition by the receivers it would seem as though the party stood upon a different footing and was not called upon to assert his rights as lessor to the surrender of the leased property. Whatever might have been the reasons and however much mistaken the receivers may have been, they acted upon their best judgment, and the court seems by that order to have given express assurance to the intervenor that the interest of the system required the payment of that rental and the preservation of that property in the system. So that the order will be that the exceptions to the report of the master will be partially sustained and the
70 receivers directed to pay the rental for the time specified, with interest. So far as the subsequent rental is concerned, there is nothing to distinguish this case from the other two heretofore considered, and the report of the master will be sustained. It is unnecessary to add more. We have had these matters under consideration for some months and have given to them the most careful consideration. The arguments and briefs of counsel have been most full and elaborate and the questions presented not easy of solution. The amounts in each case are so large that if our conclusion is erroneous a review may be had by the Supreme Court.

THAYER, *D. J.*:

I shall only add a few words to what has already been said. We are asked by the intervenors to make an order in this matter, the practical effect of which will be to give an unsecured claim priority over a mortgage debt. As there are no funds at our disposal derived from the income of the property lately in the hands of the receiver, if we allow the claims in the desired form, we must enforce payment out of the mortgaged property by retaking it, unless the purchasers under the mortgage see fit to discharge the lien which we impose.

It is proper, therefore, that we should consider carefully both the legal and equitable grounds upon which such action can be predicated and justified.

No lawyer would for a moment doubt that an assignee in bankruptcy would be liable for rent if he took possession of leasehold premises held by the bankrupt and used them for the purpose of administering on the assets in his hands.

In that event the assignee would become personally bound
71 by the covenants of the lease so long as he remained in possession, and the court would be bound to protect him against the covenant to pay rent by allowing him for all rent disbursements as an expense of administration (*In re* Merrifield, Third National Bankruptcy Register, p. 98, and People *vs.* Insurance Company, 30 Hun., 142).

The same principle holds good, of course, in its application to public liquidators under the English winding-up acts and receivers of copartnership estates and the like.

In re Oaks, Pitts, Colliery Company (L. R., vol. 21, Chancery Division, 330. *In re* Lundy Granite Company, Sixth Chancery App.,

462, and Commonwealth *vs.* Insurance Company, 115 Mass., 278.) If such officers use property held under lease for the purpose of advantageously administering on property committed to their charge they must pay rent as stipulated in the lease, and the amount paid is an expense of administration, is chargeable against the fund undergoing administration.

The rule as applied in such cases has never operated, however, so far as we can find, to disturb the priority of claims—that is to say, so as to give an unsecured debt a preference over one that is secured.

It is also well settled that if mortgagees, in a proceeding to foreclose a mortgage, procure the appointment of receivers and cause them to take possession of property held under lease by the mortgagor, to which their mortgage does not extend, they thereby bind the mortgaged property for the payment of rent that accrues so long as the receiver remains in possession.

Such was the rule applied in the case of Woodruff *vs.* The Erie Railroad Company (93 N. Y., 609); Miltenberger *vs.* Railroad Company (106 U. S., 286).

72 The principle which underlies all of the cases cited appears to be substantially the same—that is to say, if an assignee in bankruptcy, public liquidators, receivers of insolvent corporations, or receivers appointed under proceedings to foreclose mortgages take possession of the property of a third party held under a lease and use it ostensibly for the purpose of administering advantageously on the assets in their hands, or at the instance of and for the benefit of mortgagees, full rent must be paid for the use of such property out of any funds within the control of the court, and that without reference to the question whether the use of the leased premises proves to be beneficial or otherwise.

There is, in fact, no difficulty in deciding what the law is. The difficulty lies in making a correct application of it to the particular case under consideration, or rather it lies in determining whether the present proceeding was of such an exceptional character that the principle invoked to establish the liability in question is applicable.

Attention has already been called to the fact that the bill in this case was filed by the mortgagor against all persons and corporations, including the lessors, who were interested in the various roads forming the complainant's railroad system.

As I understand the bill of complaint, the complainant professed to be acting not alone in the interest of mortgagees, but in the interest of all the corporations whose roads had become an integral part of the system, whether by lease, consolidation, or otherwise.

It was substantially represented by the bill that the affairs of the complainant had become so complicated by the various mortgages that had been executed, the consolidations that had taken place, and the leases made or assumed and by the admixture of rolling stock that the best interests of all parties concerned de-

73 manded the appointment of receivers over the whole system as the only feasible method of working out the equities appertaining to each.

It was on account of such representations that the receivers were appointed and ordered to take possession of the whole system. In other words, the receivership was not created for the benefit or protection of any one interest or class of interests, but for the benefit of all parties to the suit who were in anywise interested in the system. The lessor companies, whose roads went into possession of the receiver, were advised of such facts by the form of the bill and by the prayer for relief. They were at liberty at any time after it was filed to show that the extension of the receivership over the leased lines was not necessary to the protection of any interests of the lessor companies or that it was detrimental to such interests. If such showing had been made (and it appears to me that the lessor companies were cited into court to confess or deny the averments of the bill in that behalf) the leased lines would unquestionably have been released at any stage of the proceeding.

Intimations to that effect and of the theory on which the court was proceeding appear to have been given during the progress of the case from time to time; but so long as the lessor companies acquiesced in the averments contained in the bill, and on the faith of which receivers were appointed, it appears to me that the receivership continued to stand for their protection and for the protection of the interests of all persons and corporations who were parties to the proceeding, and that so long as that state of affairs existed the relative rights of the parties were not changed, and that the mere possession by the receiver of the leased lines did not have the effect of making the rentals a charge on the body of the mortgaged property superior in rank to the mortgage debt. The case, as I conceive, bears some analogy to the case of the Bridge Water
74 Engineering Co. (12th Chancery Division, 181), where, inasmuch as a public liquidator had retained possession of rented premises for the mixed accommodation or benefit of the landlord and the liquidator, the chancellor refused to allow the rents as a part of the cost of administration.

The question before us should not be determined, in my opinion, with any reference to the question whether it was in fact necessary for the protection of the interests of the lessor companies to extend the receivership over the leased lines, although if we were at liberty to consider that matter it seems probable, in view of the condition of one of the leased roads, that if it had not been taken in hand by the receivers it would have suspended operations for a time at least, and put the public to great loss and inconvenience, even if it had not incurred a forfeiture of its franchises.

But, be this as it may, the question is not to be determined by considering whether the representations of the bill were erroneous in so far as the leased lines were concerned. We must consider what the bill did in fact allege, upon what theory it was drawn, and for what purpose the court appointed receivers and for whose benefit, and whether in the light of such facts and the subsequent acquiescence of the lessor companies they can now legally or equitably insist that because the receivers took possession of their road under an order of court the rentals which accrued during the period of

such possession must perforce take precedence over the mortgage debts, although such leased lines during the period in question did not pay operating expenses.

In my opinion this question must be answered in the negative. The case is so exceptional in its character that the principle invoked to establish the liability in question, in my judgment, is not applicable.

75 In the course of the argument something was said about the receivers having exercised an election to take possession of the leased lines. On the one hand it was argued that as they elected to take possession they became personally bound as assignees of the lease by all its covenants. On the other hand it was urged that they acted under the orders of the court and exercised no election or discretion.

It appears to me that the receivers did not elect to take the leased lines in the sense in which that term is used in the books, but at the same time I do not regard the question as to whether their action was voluntary or enforced as at all material. They had possession of the leased lines and operated them. If the court ordered them to take possession of the same for the benefit of any particular interest or class of interests involved and without any reference to the protection of the rights of the lessor companies themselves, then those interests for whose advantage the leased lines were taken and operated by the receivers should stand the expense of the rental and the court would be bound to so order. The court has no more right than an individual to use one person's property for the exclusive benefit of another without paying for its use.

But from the record and proceedings in this case it does not appear to me that any property was so taken and used. The entire system was taken in hand at the instance of the general owner to protect the interests of all parties concerned. The court, through its receivers, at all times adopted that line of policy which seemed to be conducive to the best interests of all parties as then foreseen. Among other things done for the protection of all parties to the litigation, at an early day it made an order to prevent the earnings of the numerous roads composing the system from becoming confused. It appears to me that such order, so far as it related to the leased lines, was a most explicit avowal that the court did

76 not regard the rentals that from time to time accrued as an expense of administration, and that it did not regard the receivership as having been created for the benefit of the mortgagees or any particular class of creditors, but for the mutual advantage of all parties concerned, the lessor companies included.

In conclusion I will add that in any light in which I have been able to view the question it appears to me that the report of the master should be confirmed in the respects indicated in the main decision, and I accordingly concur in the order already announced.

77 On the 21st day of March, 1888, in pursuance to the above opinion, the judges of said court entered the following decree:

(*Decree.*)

CENTRAL TRUST CO. OF N. Y. *et al.*, Complainants, *vs.* WABASH, ST. LOUIS & PACIFIC R'Y CO. *et al.*, Defendants.	2357 & 2464, Consolidated.

In re intervening petition of George I. Seney.

This cause coming on to be heard upon the intervening petition of George I. Seney, the answer thereto of Solon Humphreys and Thomas E. Tutt, as receivers of the Wabash, St. Louis and Pacific railway, and the report of E. T. Allen, Esquire, special master herein, and the court, having heard argument and being fully advised in the premises, doth order, adjudge, and decree:

1. That the exceptions of said George I. Seney to said master's report be, and they are hereby, sustained.

2. That said Humphreys and Tutt, receivers as aforesaid, do forthwith pay to said George I. Seney, out of any moneys in their hands, as such receivers, or to be received by them from the purchasing committee for that purpose, the sum of eleven thousand two hundred and sixty-three dollars ($11,263), being the rental upon the lease of the Clarinda and St. Louis railway from August 1, 1884, to April 16th, 1885, together with interest thereon from said April 16th, 1885, to this time, amounting to the further sum of nineteen hundred and seventy-one dollars and thirty-two cents ($1,971.32), in all the sum of thirteen thousand two hundred and thirty-four dollars and thirty-two cents ($13,234.32).

3. That said Humphreys and Tutt do further pay the taxed costs of this proceeding.

And by consent of parties it is ordered that either may
78 present petition for rehearing within thirty days from this date.

Mar. 21st, '88.

(Signed) DAVID J. BREWER,
Circuit Judge.

On April 16th, 1888, Solon Humphreys and Thomas E. Tutt, as receivers, filed in this cause the following petition for a rehearing:

(*Petition of Receivers for Rehearing.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants, *vs.* WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.	In Chancery. =2357 and 2464, Consolidated. George I. Seney, Intervenor.

Petition of Solon Humphreys and Thomas E. Tutt, receivers, for a rehearing in the cause of George I. Seney, trustee, intervenor, to recover rental of Clarinda and St. Louis railroad.

Now come Solon Humphreys and Thomas E. Tutt, receivers of the property of the Wabash, St. Louis & Pacific Railway Company,

and present to your honors this their petition for a rehearing of the above-entitled cause, wherein George I. Seney, trustee, is the intervening complainant and said receivers are the defendants, and wherein your honors have found and adjudged that said defendants do forthwith pay to said George I. Seney, trustee, out of any moneys in their hands as such receivers or to be received by them from the purchasing committee for that purpose the sum of $11,263,
79 being the rental upon the lease of the Clarinda & St. Louis railway from August 1, 1884, to April 16, 1885, together with interest thereon from said April 16, 1885, to this time, amounting to the further sum of $1,971.32, in all the sum of $13,234 32, and that said defendants, Humphreys and Tutt, do further pay the taxed costs in said proceeding; and your said petitioners respectfully represent unto your honors that they are advised that said finding and decree are erroneous and ought to be reviewed and set aside for the many errors and imperfections apparent upon the face of said proceedings, among which are the following, to wit:

First. They are advised that through inadvertence the court failed to consider the controlling fact apparent on the face of the record that the mortgages in which George I. Seney, the intervenor, is trustee, and on which said finding and decree are founded, do not embrace or cover any of the rentals, incomes, or earnings of the Clarinda & St. Louis railroad, and that hence said rentals, incomes, and earnings constitute no part of the property pledged or conveyed to said Seney to secure the bonds in the petition described.

Second. Through inadvertence the court failed to consider the controlling fact that said decree is founded on an intervening claim for rental brought and prosecuted by George I. Seney, as trustee, to recover rental not covered by his mortgage, and which only arises or becomes due under a lease to which he is not a party, and that there is therefore no privity of contract existing between said Seney as such trustee and said receivers; and, furthermore, the court overlooked the fact that no privity ever existed between said Seney as trustee in the mortgage and the St. Louis, Kansas City & Northern Railway Company, as lessee of the Clarinda & St. Louis railroad, with respect to said rental or with respect to the interest due
80 on the bonds secured by mortgage on said railroad.

Third. The court, in determining the case, failed to consider the fact that the lease from the Clarinda & St. Louis Railroad Company to the St. Louis, Kansas City & Northern Railway Company only obligated the latter company to pay interest on its own bonds, issued for the construction of said Clarinda & St. Louis railroad, at the rate of twelve thousand dollars per mile, on so much of said road as lies in the State of Iowa; whereas the record shows that less than one-half of said railroad, or only ten miles thereof, is in said State of Iowa.

Fourth. Because the record on which said decree is founded shows that it was the duty of the receivers, under the order of their appointment, to apply the earnings and incomes from the property in their charge—

1st. To the payment of the debts contracted by them in the preservation and operation of all the railroads in their hands.

2nd. To the payment of the labor and supply debts contracted by the Wabash, St. Louis & Pacific Railway Company during the six months preceding their appointment; and,

3rd. To the payment of interest on bonds and the rentals on leased lines; and, through inadvertence, the court failed to consider the controlling fact that it appears from the record in the case, and particularly from the reports of the receivers filed and approved therein, that the earnings of the lines of railroad described in said order of June 28, 1884, as being owned or controlled by the Wabash Railway Company, and the St. Louis, Kansas City & Northern Railway Company, at the date of their consolidation under the name of the Wabash, St. Louis & Pacific Railway Company, were not, up to the date of the order of April 16, 1885, or even up to the time when said Clarinda & St. Louis railroad was taken from the possession of said receivers, sufficient to pay the debts contracted by said
81 receivers in maintaining and operating the roads in their charge and the debts contracted by the Wabash Company for labor and supplies during the six months preceding the receivership, and leave anything in the hands of said receivers with which to pay the rental on said Clarinda & St. Louis railroad or the interest on the bonds secured by mortgage thereon.

Fifth. The receivers are advised that the court failed to consider the controlling fact that the order of June 28, 1884, on which said decree is founded, was only provisional, and that it made the payment of interest on the bonds secured by mortgage on the Clarinda & St. Louis railroad dependent upon whether there should be funds in the hands of the receivers with which to pay the same, after meeting such other obligations as they had been directed to discharge by the former orders of the court; whereas the record in the case shows that the earnings of all the lines mortgaged to secure the bonds on which the receivers were, by said order of June 28, 1884, authorized to pay interest were not, from the date of the appointment of said receivers up to the time when said Clarinda & St. Louis railroad was taken out of their possession, sufficient to pay their operating expenses, cost of maintenance, taxes, and the labor and supply debts of said Wabash, St. Louis & Pacific Railway Company contracted during the six months preceding said receivership and leave any balance in the hands of said receivers which could, under said order of June 28, 1884, be applied to the payment of the rental on said Clarinda & St. Louis railroad or to the payment of interest on the bonds secured thereon by mortgage.

Sixth. Through inadvertence the court failed to consider the controlling fact that the order of June 28, 1884, was not intended to displace equities, but to preserve them, and that said order was not intended to give the holders of the bonds secured by mort-
82 gages on the Clarinda & St. Louis railroad, which was operated at a loss, any better or superior right to their interest than it gave to the holders of all the other bonds mentioned in said order and on which the receivers were also authorized to pay interest; and

especially did the court overlook the fact that said order was not intended to give to the holders of the bonds secured by mortgage on the Clarinda & St. Louis railroad rights superior to those holding bonds secured by mortgage on other lines, mentioned in said order, which were operated at a profit.

And furthermore the court, through inadvertence, failed to consider its former opinion and judgment in the case, wherein George I. Bonner and others intervened for and demanded for the same period the net earnings of the lines on which their bonds were secured by mortgage, when the record in the case shows that the lines on which the bonds owned by Bonner and others were secured were operated at a profit, whereas it is admitted in this case that the Clarinda & St. Louis railroad was operated at a loss.

Seventh. Through inadvertence the court failed to notice the fact that its judgment rendered herein in favor of George I. Seney, trustee, gives to the holders of bonds secured by mortgage on the Clarinda & St. Louis railroad an undue and inequitable preference over parties holding other bonds mentioned in said order of June 28, 1884.

Eighth. Through inadvertence the court failed to consider the fact that if said rental is now paid it must be done out of the net earnings of other lines or charged as a lien upon property already pledged for the payment of other bonds, and which other bonds are also mentioned in the order of June 28, 1884, as being entitled to interest on the same conditions as the holders of bonds se-
83 cured on the Clarinda & St. Louis railroad, whereas the record shows that many of the other bonds mentioned in said order were secured by mortgages on lines which earned a surplus, and that they have been denied their interest for the same period.

All of which errors and imperfections in said decree are apparent on the face of the record in said cause, wherefore said petitioners bring this their petition for a rehearing and they pray that said decree be set aside and reversed, and that no further proceedings be had under the same, and that they have such other and further relief in the premises as to the court it shall seem meet.

SOLON HUMPHREYS AND
THOMAS E. TUTT, *Receivers*,
By WELLS H. BLODGETT, *Solicitor*.
H. S. PRIEST, *Of Counsel*.

On September 6th, 1888, the judges of said court entered the following decree:

(*Order Setting Aside Decree and Granting Rehearing.*)

CENTRAL TRUST CO. OF N. Y. *et al.*, Complainants, *vs.* WABASH, ST. LOUIS & PACIFIC R'Y CO. *et al.*, Defendants. } 2357 & 2464, Consolidated.

In re intervening petition of George I. Seney.

It is ordered that the decree heretofore entered herein on March

21st, 1888, be, and the same is hereby, vacated and set aside and a rehearing granted.

On March 18th, 1889, the judges of said court, upon final hearing of said petition for a rehearing, delivered the following opinion:

84 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

CENTRAL TRUST COMPANY and JAMES CHENEY *vs.* WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.* } In Equity. Consolidated Cause.

The intervening petition of Geo. I. Seney, trustee, to recover rental of the Clarinda & St. Louis railroad.

Opinion.

BREWER, *C. J.*:

The opinion filed when this case was originally decided will be found in the 34th Fed. Rep., 259. At that time there were three intervening petitions before us. After discussing the general questions involved and coming to a conclusion adverse to the intervenors we said that this intervenor occupied a different position and had equities based on the order of June 28, 1884, which entitled him to recover.

The petition for rehearing on the part of the receivers and the purchasing committee challenges this conclusion, and it is insisted that the construction we placed on the order of June 28 is not only erroneous, but in conflict with prior rulings in this same foreclosure, and particularly with the decision in the intervening petition of Bonner *et al.*, reported in 30 Fed. Rep., 332. In our original opinion we said, referring to the order of June 28: "There was an express order of the court in reference to that branch and couched in such language that the intervenor had a right to rely upon it and expect the payment of his rent until some other order was made.

85 Wherever a specific order is entered after showing and petition by the receivers it would seem as though the party stood upon a different footing and was not called upon to assert his rights as lessor to the surrender of the leased property." It will be seen from this quotation, as well as from the balance of the opinion, that the sole ground of difference between the case of this intervenor and the others grew out of this order of June 28th. That order or as much as is material reads as follows:

"It is ordered that until otherwise directed the receivers herein, from the incoming rents and profits of said property, after meeting such other obligations as they have been directed to discharge by the former orders of this court, pay, as the same shall from time to time mature, from whatever balance may remain in their hands, on the first day of February and August (or as soon thereafter as practicable), the semi-annual interest, at six per cent. per annum, then due on two hundred and sixty-four (264) bonds, of one thousand

dollars each, issued in July, 1879, and secured by mortgage on the Clarinda and St. Louis railroad (otherwise known as the Clarinda Branch), amounting to $7,920."

It will be observed that the receivers are directed to pay this interest "after meeting such other obligations as they have been directed to discharge by the former orders of this court." Now, only one month before and in the order appointing the receivers they had been required to pay, first, the expenses of operating and maintaining the property in their charge, and, second, the debts of the Wabash Company incurred for labor and supplies during the six months preceding the receivership, so that at the time the order to pay interest was entered there was a former and existing order to pay what is commonly known as preferential debts. It cannot be that this order was intended to substitute or set aside former orders, indeed it is expressly made subject to them, but it is a part of the history of this
86 foreclosure that there were at the commencement of the receivership over three million of these preferential debts, and at the time when the sale was made under the foreclosure there still remained over two million unpaid. The receivers were never able to pay these preferential debts; and as this order of June 28th to pay interest is expressly subordinated to the former order as to preferential debts, it follows they were never called upon to pay this interest and the intervenor never had a perfected claim therefor. Not only is this order of June 28th subordinated to former orders; it expressly directs the source from which payment is to be made. It is "from the incoming rents and profits of said property," and again "from whatever balance may remain in their hands." It was not to be paid out of the *corpus* of the property or from its sale, but simply from the rents and profits, and that this is the proper construction of the order was affirmed in the case of Bonner, in which, speaking for the court, I said:

"At another time we ordered payment of rent out of the earnings of a leased line, and, in the course of an opinion which I then delivered, I said that those surplus earnings belonged to those different lines, and they should be used in payment of their obligations; but if you will read the orders of the court that were entered and the opinions that were announced you will find no attempt to set aside the orders made by the court, at the inception of the receivership, that the preferential debts should be first paid. Those orders stood like warrants drawn upon a treasurer to be paid out of funds not hereinbefore appropriated."

I am satisfied from these conclusions that in the former decision we did not give sufficient consideration to all the clauses of this order of June 28th, and by reason thereof we were led to make an order in favor of the intervenor to which he was not entitled
87 and which was entirely out of harmony with the other administration of this foreclosure. Therefore, our attention having been called to it by this petition for a rehearing, we change the order heretofore entered to another one in favor of the respondents and against the intervenor. I am also inclined to think that

possibly one or two other reasons given by the respondents are sufficient to compel the ruling we now make, but I do not care to enter into any discussion of them; as I said in the former opinion, the amount involved is so large that if we have made a mistake it can be corrected in the Supreme Court.

The report of the master will be confirmed and judgment entered against the intervenor for costs.

Thayer, J., concurring.

On March 18th, 1889, the judges of said court, in accordance with said opinion, entered the following decree dismissing said petition at intervenor's cost:

(*Final Decree.*)

CENTRAL TRUST CO. OF N. Y. *et al.*, Complainants, *vs.* WABASH, ST. LOUIS & PACIFIC R'Y CO. *et al.*, Defendants.	2357 & 2464, Consolidated.

In re intervening petition of George I. Seney, trustee.

The exceptions of the intervenor to the report of the master herein having been considered by the court, and the court being now fully advised thereof—

It is ordered, adjudged, and decreed that said exceptions be, and the same are hereby, overruled, and the said report be, and it is, in all things confirmed.

It is further ordered that said George I. Seney, trustee, pay the costs taxed herein, and that execution issue therefor.

88 On March 23rd, 1889, an order was entered in said cause in words and figures following, to wit:

(*Appeal Allowed.*)

CENTRAL TRUST CO. OF N. Y. *et al.*, Complainants, *vs.* WABASH, ST. LOUIS & PACIFIC R'Y CO., *et al.*, Defendants.	2357 & 2464, Consolidated.

In re intervening petition of Geo. I. Seney, trustee.

Now comes George I. Seney, trustee, by his solicitor, on whose motion it is ordered that an appeal from the decree of this court to the Supreme Court of the United States be allowed upon said intervenor giving an appeal bond in the penal sum of five hundred ($500) dollars, to be approved by the court or one of the judges thereof.

On April 12th, 1889, the following order was entered in said cause:

(*Appeal Bond Approved.*)

CENTRAL TRUST CO. OF N. Y. *et al.*, Complainants, *vs.* WABASH, ST. LOUIS & PACIFIC R'Y CO. *et al.*, Defendants. } 2357 & 2464, Consolidated.

In re intervening petition of George I. Seney, trustee.

Now comes George I. Seney, trustee, by his solicitor, and presents his appeal bond in the sum of five hundred dollars, which is approved by the court and ordered to be filed as part of the record herein.

And thereupon it is ordered that the clerk of this court make out and certify to the Supreme Court of the United States a transcript of the record and proceedings in this cause.

Said appeal bond is in words and figures following, to wit:

89 Know all men by these presents that we, George I. Seney, trustee, as principal, and Theodore Sheldon, as surety, are held and firmly bound unto the Wabash Western Railway Company in the full and just sum of five hundred dollars, to be paid to the said Wabash Western Railway Company, — heirs, executors, adminstrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eleventh day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at the March, A. D. 1889, term of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri, in a suit depending in said court *between* George I. Seney, trustee, was intervenor or plaintiff and Solon Humphreys and Thomas E. Tutt, as receivers of the Wabash, St. Louis & Pacific railway, were respondents or defendants, final decree was rendered against the said George I. Seney, trustee; and the said George I. Seney, trustee, having obtained leave of appeal of the said court to reverse the decree in the aforesaid suit and a citation directed to the said Wabash Western Railway Company, substituted as defendant in place of said Humphreys and Tutt, receivers aforesaid, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said George I. Seney, trustee, shall prosecute said appeal to effect and answer all damages and costs if — fail to make good his said plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

GEORGE I. SENEY, *Trustee*, [SEAL.]
By THEODORE SHELDON, *His Att'y.* [SEAL.]
THEODORE SHELDON. [SEAL.]

Approved by—
AMOS M. THAYER, *Dist. Judge.*

90 [Endorsed:] No. —. United States circuit court, eastern division of the eastern judicial district of Missouri. Central Trust Company of New York *et al. vs.* Wabash, St. Louis & Pacific R'y Co. *et al.* Intervening petition of Geo. I. Seney, trustee. Bond, $500.00. George I. Seney, trustee, principal; Theodore Sheldon, sure*ties*. Filed 12th day of April, 1889. A. P. Selby, clerk.

91 On May 27th, 1884, said respondent company, The Wabash, St. Louis & Pacific Railway Company, filed in said court its bill of complaint against said Central Trust Company of New York and others, respondents, in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri, of the March Term, A. D. 1884.

To the honorable the judges of the circuit court aforesaid, in chancery sitting:

Humbly complaining to your honors, your orator, The Wabash, St. Louis & Pacific Railway Company, would respectfully represent that your orator is a body politic and corporate organized and existing under and by virtue of the laws of the State of Missouri, and is a citizen and resident of said State.

That your orator owns a number of lines of railroads extending across the States of Missouri, Illinois, and Indiana, and also into the States of Ohio, Michigan, and Iowa, with branches extending in various directions within said States.

That orator was created a body corporate by the consolidation of certain other corporations organized and existing under the laws of the States of Missouri, Illinois, Indiana, and Ohio, and owning and operating lines of railroad in said States.

That portions of the said lines so owned by your orator lie within the eastern district of Missouri, and your orator's principal office and the headquarters of its management are located in the city of St. Louis, in said district.

92 Further complaining, your orator further shows unto your honors that your orator is also the lessee of certain other lines of railroads located within the said several States, and your orator has operated all of said lines as a unit until recently, when said lines were leased by orator to the St. Louis, Iron Mountain and Southern Railway Company, a corporation existing under and by virtue of the laws of the State of Missouri, and that said last-named company now operates all of said lines of railroad as the lessee of orator.

That by the terms of said lease said St. Louis, Iron Mountain and Southern Railway Company was required to pay, as rental of said lines, all the net earnings thereof to orator or on account of orator, but was not bound to pay or advance to or on account of orator any sum or sums in excess of such net earnings; all of which will more fully appear by reference to such contract of lease made on exhibit as hereinafter set forth.

Your orator further shows that several lines of railroad owned by

orator as distinguished from its leased lines were acquired in part by consolidation and in part by purchase, and that, while said lines were owned by other corporations prior to the acquisition of title thereto by orator, each of said lines was incumbered by one or more mortgages or deeds of trust issued and executed by the companies owning the said lines prior to orator and intended to secure the payment of the bonded indebtedness of such companies, and that large numbers and amounts of such bonds so secured by liens on said portions of orator's lines are now outstanding and unpaid; and because said mortgages or deeds of trust are very numerous your orator files as part of this bill of complaint a list thereof, showing the dates of said several instruments, the trustees named therein, the amounts secured thereby, the rates of interest and times when interest and principal mature upon the same, the several
93 companies by which said mortgages and bonds were issued, and the lines covered by each of said mortgages or deeds of trust, and also the amounts now unpaid thereon severally; and orator marks said list Exhibit A, and prays that the same be taken as a part hereof.

And orator also embraces in said Exhibit A a statement of interest obligations assumed by orator and secured by mortgages or deeds of trust on its leased lines, the payment of such interest being conditions on which orator obtained such lines; and orator also files as parts of said Exhibit A copies of all such mortgages, deeds of trust, and leases as are necessary to the purposes of this bill (and which are not herein made distinct exhibits by themselves), so far as such copies are obtainable in time to be filed herewith, the original and record copies of some of said instruments not being within reach of orator within the time left to orator under the circumstances which require the prompt filing of the bill of complaint; but orator will as soon as possible file copies of all such instruments so far as necessary, and prays that when filed the same may be taken as parts hereof; and orator marks all such copies of instruments as are filed herewith and are not made distinct exhibits by themselves Sub-Exhibits A, and numbers the same consecutively for easy identification.

And orator further shows that after your orator had acquired title to the greater portion of the lines of railroad aforesaid, to wit, on the first day of June, 1880, your orator executed to the Central Trust Company of New York, a corporation existing under the laws of the State of New York, and which then was and still is a citizen and resident of said last-named State, and to James Cheney, who then was and still is a citizen and resident of the State of
94 Indiana, as trustees, a certain mortgage or deed of trust, to which orator prays leave to refer as the "general mortgage." The said general mortgage was intended to secure an issue by orator, for the purposes therein expressed, of bonds to the amount of fifty million dollars, payable in gold coin on the first day of June, A. D. 1920, with interest at the rate of six per cent. per annum, payable on the first days of June and December of each year; and orator files herewith a true copy of said general mortgage,

marked Exhibit B, and prays that the same, together with the certificates attached thereto and the copy of bonds embraced therein, be taken as part of this bill as fully as if incorporated in the body thereof.

Further complaining, your orator also showeth that said general mortgage embraced all the lines of railroad then owned by orator, and also all its interest in all other lines and property then owned or thereafter to be acquired, and also all rents, issues, and profits derived by orator from said lines of road, and all leasehold interests then owned or thereafter to be acquired by orator.

And said mortgage further embraced all credits and choses in action accruing to orator and all the franchises of orator; but said mortgage or deed of trust so placed upon said property was by the terms thereof expressly made subject and inferior to all such prior liens as were charged upon the several portions of said road and the equipments thereof, and to the estate and lien of such specific trust and mortgages and obligations as might thereafter be made and charged upon any property which might thereafter be acquired by orator, and which trusts so charged should form part of the purchase-money or conditions of the acquisition of such after-acquired property by your orator.

Your orator shows that under the terms of said mortgage
95 bonds were issued, negotiated, and sold for value by orator to the amounts stated in said Exhibit A, and that interest is accruing and will fall due thereon, as shown by said exhibit.

Your orator further states that said general mortgage was duly executed, acknowledged, and recorded as required by law, and that the bonds so issued as aforesaid were duly certified by the trustees named in said mortgage, according to the terms and conditions thereof.

Further complaining, your orator showeth that on the 10th day of April, A. D. 1883, your orator executed and delivered to the St. Louis, Iron Mountain and Southern Railway Company aforesaid an indenture of lease whereby orator leased to said last-mentioned company all its lines of railroad, whether owned or leased by orator, upon the terms and conditions set forth in the said indenture, and said lessee company has, since the execution of said instrument, operated said several lines of railroad and still continues so to do as the lessee of your orator, and orator files herewith a true copy of said indenture of lease, marked Exhibit C, and prays that the same be taken as a part of this bill of complaint as fully as if incorporated into the body of it, and your orator refers to the copy so filed as Exhibit C as showing the terms and conditions upon which the lines of railroad of orator were so leased to said St. Louis, Iron Mountain and Southern Railway Company.

And orator, further complaining, also showeth to your honors that, being greatly in need of money wherewith to meet accruing interest and to place its lines of road in good condition and to obtain and pay for a large amount of rolling stock and other necessary equipment and to complete certain of said lines then being constructed, orator, on the 1st day of May, 1883, entered into a certain

other indenture with the Mercantile Trust Company of New
96 York, a corporation organized and existing under the laws of the State of New York and a citizen and resident of said last-named State; that orator was named in said indenture as the party of the first part and the said Mercantile Trust Company of New York as party of the second part, and said St. Louis, Iron Mountain and Southern Railway Company was named therein as party of the third part; and orator files herewith a true copy of said last-named indenture, marked Exhibit D, and prays that the same be taken as a part of this bill of complaint; that by the terms of said indenture orator assigned and conveyed to said Mercantile Trust Company, in trust for the purposes therein mentioned, a large number of engines and cars, and also a large number of bonds, stocks, and certificates, and also certain equitable interests of orator in certain valuable depots, grounds, and terminal facilities in the city of Chicago, Illinois, held in trust for orator by Solon Humphreys and John P. Garrett, and also certain like interests and facilities in the city of Detroit, Indiana, Peoria, Illinois, and Des Moines, Iowa.

That said last-mentioned indenture was so executed for the purpose of securing a number of bonds to be issued by orator, amounting to ten millions of dollars, payable in twenty years from date, with interest at the rate of six per cent. per annum, payable semi-annually on the 1st days of May and November of each year.

And orator further showeth that bonds secured by said indenture were issued and sold or pledged for value by orator to the amount shown by said Exhibit A, and that the amount thereof so outstanding and the interest accrued and accruing thereon are also shown by said exhibit; and orator begs leave to refer to the said indenture, so marked Exhibit D, as the "collateral trust."

97 And orator would further show that afterwards, to wit, on the 21st day of December, 1883, orator, as party of the first part, entered into a certain other indenture, bearing said date, in which said indenture the said St. Louis, Iron Mountain & Southern Railway Company was party of the second part, by which instrument orator, for the purposes therein expressed, mortgaged to said last-named company all its lines of railway and all its property, choses in action, income, rents, and profits; and orator files herewith copy of said last-mentioned indenture, marked Exhibit "E," and prays that the same may be taken as a part of this bill of complaint; and orator further shows that said last-mentioned mortgage was duly recorded, but was and is subject to certain prior mortgages herein referred to.

That said last-mentioned mortgage was intended to secure said St. Louis, Iron Mountain & Southern Railway Company as to any advances made or to be made to orator under the provisions of said indenture of lease.

Further complaining, your orator shows unto your honors that for several successive years your orator has been compelled to spend vast sums of money in repairing injuries inflicted upon the lines of your orator by repeated and extreme freshets; that during the last two years the said freshets and high waters have been so extreme

that in many places your orator's tracks, embankments, bridges, and culverts were wholly swept away for long distances, and that in one instance the bridge of your orator known as the St. Charles bridge was so far injured and so nearly destroyed that your orator was compelled to expend several hundreds of thousands of dollars in replacing the same.

That during the last two years a partial failure of crops has occurred in large sections of the country occupied by orator's lines, and particularly in those fertile portions of said country from
98 which orator fairly and reasonably expected to derive very large revenues during said time; but that during said two years orator's revenues from the causes aforesaid have been greatly diminished, and at the same time orator's expenses have been largely increased by the unusual recurrence of the extreme freshets, as herein already stated.

That in order to meet the expenses of maintenance and operation of its road and to repair the ravages occasioned by said freshets and to complete portions of its said lines in course of construction and to put the same in operation, your orator has been compelled to borrow large sums of money, the amounts of which will be hereafter stated.

That a considerable portion of said money was advanced by the St. Louis, Iron Mountain and Southern Railway Company to orator, but that under the terms of the lease aforesaid, made between orator and said last-mentioned company, the said St. Louis, Iron Mountain and Southern Railway Company is not required to make further advances, and has notified orator that it does not intend to advance any more money to orator.

That your orator also issued within the last two years its promissory notes for very large sums of money, and, in order to provide means for the meeting of its expenses and the keeping of its road in successful operation and completing its lines as aforesaid, orator induced a number of persons of high financial standing to become indorsers of said notes, and, by means of a credit given by such indorsements, orator was enabled to negotiate said notes for value and received the proceeds thereof; and orator shows unto your honors that there will be due on said promissory notes at maturity about the sum of two millions two hundred thousand dollars.

99 Orator further shows unto your honors that the several persons aforesaid by whom orator's notes were endorsed as aforesaid are partially secured with respect thereto by a pledge of bonds secured by said collateral trust to the nominal amount set forth in Exhibit A aforesaid, and to that extent said persons have a lien upon all the property embraced in said collateral trust, including the bonds, stocks, rolling stock, engines, and real estate specified in said collateral trust.

And orator further showeth unto your honors that orator is now indebted to said St. Louis, Iron Mountain and Southern Railway Company for money advanced over and above the net earnings of orator's liens leased as aforesaid on about the sum of $1,150,091.30 of principal, with interest accruing thereon, and that said sum of

principal and the interest thereof is secured by bonds issued as aforesaid and secured by said collateral trust.

Your orator further showeth that by reason of the failure of the crops aforesaid and the enormous expenses imposed upon orator by the recurrence of extreme freshets, as aforesaid, and by reason of the cost of completing its lines as aforesaid a large floating debt has accumulated against your orator, amounting in the aggregate to about the sum of 4,784,145.01 dollars.

That a portion of said indebtedness is represented by small judgments and the greater portion is distributed among a vast number of persons, all or nearly all of whom are pressing orator for payment and threatening and, as orator alleges, upon information and belief, intending to resort to every legal method of enforcing the collection of said claims.

That orator is largely indebted to a number of other railroad companies on balances arising from an exchange of business. The exact amount of said indebtedness is not known to orator, as the total thereof is continually changing; but orator avers
100 that payment of said balances within a reasonable time is necessary to the preservation of the business of orator in exchange with such other companies; and if the amount of such exchange balances due from orator shall not be promptly paid many of said companies connecting and exchanging business with your orator will withdraw their business and exchange of traffic, and thus greatly reduce the income and impair the earnings of orator; that such balances were received by orator in trust for the several companies entitled to the same.

Your orator would further show that by the terms of nearly all, if not quite all, the mortgages and trust deeds aforesaid, whether executed by orator or by other companies, on any portions of said lines prior to the time when orator acquired the same — not only embracing the roads and tangible property of the companies executing said instruments, but also the revenues and incomes to be derived from the use of the parts of said roads so mortgaged; and the holders of the bonds secured by said mortgages have always insisted upon their rights to look to the revenues of the sections of the railroad upon which the mortgages rested as means of paying and discharging said bonds.

That all or nearly all of said mortgages embraced all rolling stock to be thereafter acquired by the companies executing such mortgages; but that as such original companies and those lines of railroad have been gradually absorbed in orator's vast system the rolling stock and on said entire system has become so intermingled as to be incapable of division according to the original ownership of the said several lines of road or according to said several mortgages; and any attempt to control or dispose of portions of such rolling stock by any court or courts not having jurisdiction of the whole and not competent to deal with orator's entire property as a
101 unit would produce great confusion and uncertainty and would result in great loss to all persons interested in said rolling stock or in orator's property or securities.

Further complaining, your orator would show to your honors that the directors and officers of your orator's company have thoroughly considered and already resorted to all proper measures for obtaining the means with which to pay the floating indebtedness of said company and also to meet the large amounts of accruing interests which will fall due at the beginning of the month of June next and continue to mature by installments at very short intervals; but, may it please your honors, so it is that said officers and directors have hitherto wholly failed to provide the means with which to discharge said floating indebtedness and to meet said accruing interest; that your orator is powerless now to accomplish such purpose, and for the time being, at least, is practically insolvent; that in spite of all the exertion of orator and its officers it is now certain that a default in the payment of interest maturing in June next will occur, and that orator will also be without means of meeting its floating indebtedness.

Your orator further showeth unto your honors that several of the leasehold interests possessed by orator are of extreme importance, as some of the lines so leased form valuable links in the chain of your orator's lines, as, for instance, a leasehold interest under the Western Indiana Railroad Company, by means of which orator reaches its terminus in the city of Chicago and is enabled to do its valuable business there.

That under the terms of said leases the lessor companies will be enabled to declare a forfeiture of orator's rights unless promptly paid the rentals accruing therefor, and that, unless some provision is made by which such rentals as may shortly mature
102 can be promptly met, your orator's leasehold interests or some of them, of great value, will be declared forfeited and wholly lost to orator, and orator's lines and power of earning money will be thereby very seriously affected.

And orator further alleges that a large portion of the rolling stock in use by orator and necessary to the transaction of its business is held under conditional contracts of purchase, the title to such property not vesting in orator until fully paid for, and orator is liable to lose said property and to a forfeiture of the amount already paid thereon if it should make default in making further payments for such rolling stock as such payments mature.

Your orator further showeth unto your honors and avers, upon information and belief, that as soon as default shall be made in the payment of bonded interest maturing early in the month of June next a large number of suits will be commenced at law in the numerous State courts along the lines of orator's road, and that orator's supplies, materials, rolling stock, and other personal property will be seized under execution and attachment and your orator thereby deprived of the means of operating its road; that such a result would be almost, if not quite, ruinous to the prospects of orator with reference to earning a revenue, and more particularly disastrous because the present promise of an excellent crop in the West offers strong hope that a large revenue will be earned by orator or by the use of orator's lines of road in the near future; but if

orator's rolling stock, materials, and supplies be seized under execution and attachment (as they undoubtedly will unless protected by the action of the court of equity) the benefits of moving the now growing crop and the large revenues to be fairly hoped for as arising from such traffic will be lost, not only to orator, but to all persons interested in orator's railroads and property.

103 And, further complaining, your orator also shows and alleges, upon information and belief, that, unless protected by a court of equity as soon as the anticipated default aforesaid in the payment of interest shall occur, a number of suits will be commenced in the State or Federal courts held near the lines of orator's railroad for the appointment of receivers, under the original sectional mortgages executed by the several corporations on portions of orator's lines before orator acquired the same.

That in that event orator's lines of road will be broken into fragments, that the unity of orator's system of roads will be entirely destroyed, that orator will be prevented from realizing a revenue from the use of its lines, and that in all probability orator's roads will be sold in small sections, so that it will be impossible to re-establish the unity thereof now existing.

And orator avers that the interests of orator in said road and of all its creditors and holders of the bonds aforesaid are greatly imperiled by the existing prospect of the disruption of said road on the happening of the default impending as aforesaid, and the interests of all parties can only be protected by the interposition of a court of chancery.

That if said lines of railroad are broken up as aforesaid and the fragments thereof placed in the hands of various receivers and the rolling stock, materials, and supplies seized and scattered abroad in the manner above indicated the result will produce irreparable injury and damage not merely to orator, but to all persons having any interest in said lines of road and the securities thereof, and in order that the extent and location of orator's lines of railroad may be better known orator files a map showing the location of said lines and the States wherein they are situated, and marks said map

104 Exhibit G, and prays that same be taken as a part of the bill of complaint.

And, further complaining unto your honors, your orator would also show that your orator is now indebted in very large sums of money to a multitude of laborers who have little to live upon other than the fruits of their daily labor; that orator cannot state the amount of money so due to laborers, but avers it to be large, and that if payment of such indebtedness be not made or at least secured by the action of court of equity, by preventing the disruption of said property and the wasting of orator's assets, great and widespread suffering will ensue to said laborers and irreparable injury be thereby produced.

And your orator further showeth unto your honors that your orator and its board of directors, conceiving that it was their duty to protect said property and to treat the same as a trust fund for the security first of its creditors and then of orator's stockholders, have deter-

mined to appeal to your honors, sitting in chancery, to take possession of the said lines of road, through the instrumentality of one or more receivers, and thereby to prevent the breaking up of said lines of road and the scattering abroad of its assets in the manner above indicated.

And orator alleges, upon information and belief, that it is the intention of the trustees named in the general mortgage aforesaid, as soon as the impending default aforesaid shall occur and as soon as they may lawfully act under the terms of their trust, to proceed to foreclose the said general mortgage, and they intend to take steps in your honors' court for that purpose.

And orator, on information and belief, states that said trustees intend to proceed in this cause by means of a cross-bill to accomplish the said result above mentioned, but before said trustees could,
105 under the terms of their said trust, file either an original bill or a cross-bill herein, and on their motion obtain the appointment of a receiver or receivers, the evil results apprehended by orator and described as aforesaid will certainly occur, and the property aforesaid, real and personal, will be broken up, the unity of orator's system destroyed, and its equipment scattered abroad.

Inasmuch as orator has not an adequate remedy at law in the premises, it prays your honors to take cognizance of this bill of complaint, that, in order to the preservation of the interests of large numbers of persons, stockholders, and creditors unknown to orator and in order to the protection of the interests of all concerned and to prevent a great multiplicity of suits, your honors will appoint one or more receivers, and empower and direct such receiver or receivers to take possession of said entire property and to preserve, operate, and manage and control the same, collect all indebtedness due or to become due to orator, and otherwise to discharge all the duties ordinarily imposed by courts of equity on the receivers of railroad property by such courts appointed.

That on a final hearing of said cause your honors will, under this bill or under such amendments as may be made thereto or such supplemental bills as shall be filed herein or such cross-bills as parties in interest may also file, decree the sale of said entire property, whether such decree shall judicially foreclose said general mortgage or any of the other mortgages aforesaid or whether such decree shall dispose of said property as a trust fund on general equitable principles; that your honors will cause all the liens upon said property or any part thereof and all rights, claims, and equities of all persons interested therein — be ascertained, defined, and determined,
106 and that the proceeds arising from the sale of such property or any part thereof be applied under the orders and decrees of this court according to the rights, interests, and equities of parties or persons interested in said fund.

Orator would further show that the moneys derived from the promissory notes as aforesaid, indorsed as aforesaid, were applied to the payment of interest accruing on bonds secured by the mortgages aforesaid prior and superior to the bonds secured by the general mortgage aforesaid, and also to the payment of maturing in-

stallments of the purchase-money of rolling stock necessary and indispensable to the use of orator's road, which payment was necessary in order to prevent the forfeiture of orator's interest in said rolling stock and its right to the use and possession thereof.

And orator would further show that the said collateral trust which said endorsers have a right to rely upon as indemnity to them embraces a large amount of valuable rolling stock necessary to the operation of orator's lines of road, and it also embraces very valuable terminal facilities in the city of Chicago and in the other cities aforesaid, by means of which orator is enabled to transact its important business in said cities and without which orator would be unable to maintain its growing trade in said cities.

That it is now and will continue to be very important to orator that such receiver or receivers as your honors may appoint should prevent the foreclosure of said collateral trust and the loss of orator's terminal facilities aforesaid in the city of Chicago and said other cities and the taking from orator of the valuable rolling stock embraced in said collateral trust; and your orator therefore specially prays your honors to make such preliminary orders or decrees or such orders and decrees as can be made at a very early date,
107 enabling such receiver or receivers to protect the endorsers upon said promissory notes of orator, and thereby to prevent the foreclosure of said collateral trust and the loss of the rolling stock and terminal facilities hereinbefore last mentioned.

Orator also prays that such orders be made as would enable such receiver or receivers to raise money with which to pay all rentals accrued or accruing, the payment of which are necessary to prevent the forfeiture of orator's valuable leasehold interests, and thus prevent the breaking up of orator's lines.

That your honors will order and direct that said receivers, after paying the current expenses of operating and maintaining said railroads, and also paying for all labor, supplies, rentals, and services aforesaid, and also after protecting the endorsers aforesaid and thus preventing the forfeiture of orator's interests, rights, and property embraced in said collateral trust, and also after paying such claims as require to be paid in order to prevent a forfeiture of orator's rights and interests in all rolling stock and equipments, apply the residue or surplus of all incomes, revenues, and earnings of said railroads and all other assets coming into their hands as such receivers to the discharge of all debts, obligations, and liabilities of orator according to the rights and legal and equitable priorities of all concerned as creditors or otherwise, under the direction of the court.

And orator hereby makes defendants the following persons and corporations:

The Central Trust Company of New York as aforesaid, the same being a citizen and resident of the State of New York as aforesaid, and James Cheney, a citizen and resident of the State of Indiana as aforesaid, trustees under said general mortgage; also The St. Louis,
108 Iron Mountain & Southern Railway Company, being a citizen and resident of the State of Missouri as aforesaid; also The Mercantile Trust Company of New York, the same being a citizen and

resident of the State of New York as aforesaid; also the following persons and corporations:

The Farmers' Loan & Trust Company of New York, a corporation organized under and by virtue of the laws of the State of New York; James R. Jessup, John T. Terry, Daniel A. Lindley, Alfred T. White, H. F. Spaulding, Wager Swayne, Lewis H. Meyer, J. P. Giraud Foster, Clifford A. Hand, Robert C. Martin, George P. Gould, George S. Coe, George T. Davis, George I. Seney, John Paton, all of whom are citizens and residents of the State of New York; Solon Humphreys, a citizen and resident of the State of New Jersey; Archibald Hopkins, a citizen and resident of Washington, D. C.; John M. Woodson, James B. Eads, H. F. Vail, and Charles Parsons, all of whom are citizens and residents of the State of Missouri; James Cheney, Abraham W. Hendricks, who are citizens and residents of the State of Indiana; H. W. Ford, R. S. Brock, G. E. Leighton, Thomas B. Coulter, P. H. Brown, R. A. Betts, George M. Rice, J. Kimball, E. P. Burnham, J. A. Jamison; The Eel River Railroad Company, a corporation of the State of Indiana and a citizen and resident of said State; The Toledo, Peoria & Western Railroad Company, a corporation of the State of Illinois and a citizen and resident of the same; The Boone County & Booneville Railroad Company, St. Louis, Ottumwa & Cedar Rapids Railroad Company, The St. Joseph & St. Louis Railroad Company, The Brunswick & Chillicothe Railroad Company, St. Louis, Council Bluffs & Omaha Railroad Company, St. Louis, Kansas City & Northern Railway Co., a citizen and resident of the State of Missouri; Des Moines & St. Louis
109 Railroad Company, St. Louis, Jerseyville & Springfield Railroad Company, a corporation of the State of Illinois and a resident and citizen of said State; Des Moines & Northwestern Railroad Company, a corporation, citizen, and resident of State of Illinois; Champaign & Southeastern Railroad Company, The St. Louis Bridge Co.

Your orator would show that all the above-named defendants have or claim to have interests in the lines of your orator as lessors, mortgagors, or trustees under deeds of trust covering your orator's said lines or portions thereof.

And orator would further show upon information and belief that George Griswold and L. R. Tilton were co-trustees with James R. Jessup under the deed of trust mentioned in Exhibit A, made by the Illinois & Southern Iowa Railroad Co. in March, 1862, and that said Griswold and Tilton have departed this life; also that Edwin D. Morgan, sole trustee of two of the mortgages mentioned in Exhibit A attached to this complaint, has departed this life.

That Orville H. Browning, co-trustee of Solon Humphreys under the mortgage made by Quincy, Missouri & Pacific Railroad Co. in October, 1879, has also departed this life, and that H. F. Vail, co-trustee with Charles Parsons under the mortgage of the St. Charles Bridge of October, 1878, has, as orator is informed and believes, also departed this life.

And the orator prays your honors to appoint successors to said trustees so deceased for the proper execution of their several trusts

or to make such other order with respect thereto as will cause said trusts to be properly represented in the matters of this litigation.

110 Orator prays that all the defendants aforesaid and all such trustees as your honors may appoint be required to set up their several interests, so that the same may be fully represented in this cause.

And your orator avers that there is in this cause a dispute and controversy wholly between your orator and the said trustees under said general trust mortgage, and there is also a separate dispute and controversy in this cause wholly between orator and the trustees under the said several other mortgages herein set forth, and that such controversy may be determined as between orator and the trustees under each of said mortgages without reference to the other defendants herein.

Your orator prays that the said defendants and each of them may be required by a writ of subpœna to be and appear before your honors in the court of chancery on the first day of the next term of this court, or as soon thereafter as proper service may be had upon them or either of them; that said defendants and each of them be required to answer this bill of complaint, but not upon oath, answer upon oath being hereby expressly waived.

That this court direct all persons and all corporations being possessed of the property of orator or any part of it to surrender the same to such receiver or receivers as your honors may appoint or to hold such property or portions of property under said receiver or receivers, if the latter shall elect to pursue such course; and your orator states further to your honors that it is the intention of orator, as soon as a receiver or receivers shall be appointed as aforesaid and as soon as your honors have acquired primary jurisdiction of said cause and said property, to file like bills in the circuit courts of the United States of each of the districts into which such lines extend,

111 praying such courts to take ancillary jurisdiction of said cause and to aid your honors in administering said property and disposing of the same according to the rights of all parties.

Orator further represents to your honors that it will become very important to the interest of your orator and its creditors that the operation of orator's lines of road should not be interrupted and that business relations with other lines of railroad and with all persons engaged in the practical operation of orator's lines should be maintained and preserved, and to that end it will be necessary and important that the balance due to other lines of road and amounts due laborers, employees of various kinds, attorneys, and others performing professional services for orator, and also all claims for supplies and materials furnished orator, should be met and paid, otherwise it is very probable that a large number of laborers and other employees will suddenly abandon the service of orator, and persons who have been furnishing materials and supplies to orator will suddenly cease to furnish the same; and therefore orator prays your honors to direct such receiver or receivers as may

be appointed herein, out of the earnings of said road or out of any moneys available, to pay all such unsatisfied claims for current expenses, supplies, labor, exchange of traffic and professional services, and that such payments include all the claims of the character aforesaid accruing or maturing within a reasonable time before the filing of this bill.

Orator further shows unto your honors that by reason of the number of defendants herein and by reason of their residences being in many instances far apart and by reason of the pressing need of the appointment of a receiver to prevent the disastrous consequences hereinbefore indicated orator has not been able to serve notices upon all of the defendants of the application intended to be made for the appointment of a receiver or re-
112 ceivers, but orator has caused notice thereof, together with a copy of this bill, to be served on the trustees aforesaid of the Central Trust Company of New York and defendant Cheney, who represent the largest interest and most important creditors of orator, and orator has also caused like notice to be served upon the defendant.

And orator prays your honors to make such order in the premises as will insure the protection of the interests of orator and its creditors, giving an opportunity to all the defendants not served with notice to be heard hereafter; and orator avers that no injury can arise to any creditor or person in interest from the appointment of the said receivers with or without notice, as such receivers' possession will enure to the benefit of all the persons concerned.

And your orator prays such other and further relief as the nature of its case may demand and as shall seem to your honors consistent with equity and good conscience; and your orator, as in duty bound, will ever pray, &c.

THE WABASH, ST. LOUIS AND PACIFIC RAILROAD COMPANY,
By WAGER SWAYNE,
Solicitor for Complainant.

—— ——, *Of Counsel.*

113 STATE OF NEW YORK, }
County of New York, }

Before me, William J. Harding, a notary public in and for the county and State aforesaid, on this 22d day of May, A. D. 1884, at my office, in said county, personally appeared A. L. Hopkins, who, being by me duly sworn, makes oath as follows:

"I, Amos L. Hopkins, do hereby depose and say that I am now and have been for a long space of time vice-president of the Wabash, St. Louis and Pacific Railway Company and one of the executive officers of said company; that under my official relations with said company I am as well informed of the facts and statements set forth in the foregoing bill of complaint as any other officer of said company; and I further say that all the averments and statements con-

tained in said bill of complaint and in the bill made part thereof are true, as I am informed and verily believe; and further I say not.

A. L. HOPKINS.

Sworn and subscribed before me the day and year last above written.

Witness my hand and notarial seal.

[SEAL.] WM. J. HARDING,
Notary Public, Kings County, New York.

Certificate filed in New York county.

(8424 A.)

On the 27th day of May, 1884, Solon Humphreys and Thomas E. Tutt were appointed receivers of all the railroad property of said Wabash, St. Louis & Pacific Railway Company by an order of said court, which is in the following words and figures, to wit:

114 & 115 In the Circuit Court of the United States for the Eastern District of Missouri, of the March Term, 1884.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, Complainant,
against
THE CENTRAL TRUST COMPANY OF NEW YORK, JAMES Cheney, The Mercantile Trust Company of New York, and Others, Defendants. } In Chancery.

Order of Court.

Now, on this 27th day of May, 1884, comes the said complainant, by its solicitors and counsel, and, having filed its bill of complaint and exhibits herein, prays the court to appoint a receiver or receivers, with power to take possession of, manage, operate, control, and preserve all the railroads owned, operated, or leased by the said complainant, and also all property of every description, real, personal, and mixed, and all rights, credits, and choses in action of the said complainant, whether situated within the said eastern district of Missouri or elsewhere.

And the complainant having by the said bill of complaint and exhibits forming a part thereof shown the court that there is great danger of loss, waste, and destruction of the property of complainant or valuable parts thereof, unless such receiver or receivers be appointed, and the application having been by the Hon. Samuel Treat, district judge for the eastern district of Missouri, referred to me for consideration, and the court having duly considered said application, it is—

Ordered, adjudged, and decreed that Solon Humphreys and Thomas E. Tutt be, and the same are hereby, appointed receivers of the said railroads and all the property of said company, with power and instructions to take possession of the same and to manage, control, and operate said railroad, preserve and protect all said prop-

erty, and collect, as far as possible, all accounts, choses in action, and credits due to said company, acting in all things under the order of this court or of such other courts as may entertain jurisdiction of parts of said property as ancillary to the jurisdiction of this court.

That the receivers, before entering upon their duties, give their joint and several bond to the master in chancery of this court, for the benefit of all whom it may concern, in the penal sum of five hundred thousand dollars, conditioned for the faithful performance by said receivers of their duties as such, and that they will in all things observe and perform the orders of this court now or hereafter to be made.

It is further ordered that the said receivers, out of the income that shall come into their hands from the operation of said railroad or otherwise, proceed to pay all balances due or to be-
116 & 117 come due to other railroads or transportation companies on balances growing out of the exchange of traffic, accruing during six months prior hereto.

That said receivers also in like manner pay all rentals accrued or which may hereafter accrue upon all leased lines of said complainant and for the use of all terminal or track facilities and all such rentals or instalments as may fall due from said complainant for the use of any portion of road or roads or terminal facilities of any other company or companies, and also for all rentals due or to become due upon rolling stock heretofore sold to complainant and partially paid for.

That said receivers also pay in like manner out of any incomes or other available revenues which may come into their hands all just claims and accounts for labor, supplies, professional services, salaries of officers and employees that had been earned or have matured within six months before the making of this order.

That said receivers present their said bond to this court or any judge thereof for approval, and that upon said presentation and approval of said bond said receivers are entitled and required to proceed at once with the performance of their duties.

It is further ordered that all parties herein, upon being informed of this order and of the approval of said bond by this court, proceed to surrender all the lines of said railroad and all the property, choses in action, and accounts of said company to said receivers; and the complainant is authorized to apply to any other United States circuit court of competent jurisdiction for such order or orders in aid of the primary jurisdiction vested in this court in said cause as may have ancillary jurisdiction herein.

It is further ordered that said receivers pay all current expenses in the operation of said road, collect all the revenues thereof, and all choses in action, accounts, and credits due and to become due to the company.

That such receivers keep such accounts as may be necessary to show the source from which all such income and revenues shall be derived with reference to the interest of all parties herein and the expenditures by them made.

That said receivers report to this court from time to time, once

in each three months, their doings under this decree, and that they apply for instructions to this court when necessary.

And said receivers having filed their bond as required by this order, and the court having fully approved the same, said appointment is hereby confirmed, and said receivers are hereby required to proceed with their duties under said appointment.

DAVID J. BREWER,
Circuit Judge.

And thereupon the said receivers, Solon Humphreys and Thomas E. Tutt, present their bond in the penal sum of $500,000, which is approved and ordered to be filed.

AT CHAMBERS, *May* 29, 1884.

The order heretofore entered in this case for the appointment of receivers is modified by striking out of the third paragraph of said order the words "to the master in chancery of this court," so that the paragraph shall read as follows: "That the receivers, before entering upon their duties, give their joint and several bond for the benefit of all whom it may concern in the penal sum of five hundred thousand dollars, conditioned for the faithful performance by said receivers of their duties as such, and that they will in all things observe and perform the orders of this court now or hereafter to be made."

118 On the 9th day of June, 1884, there was filed in said court in said cause No. 2357, by leave of court, the cross-bill of said Central Trust Company of New York and James Cheney, trustees, setting up default in the installment of interest due on June 1st, 1884, on the general mortgage bonds of the Wabash, St. Louis & Pacific Ry Co. and praying for the foreclosure of the mortgage in which said Central Trust Company and James Cheney are trustees, styled "general mortgage," certain mortgages executed in aid of said mortgage and styled in said cross-bill "sustaining mortgages," and the sale of the property covered thereby, and for a receiver of said mortgaged property.

On the 15th day of June, 1884, there was filed in said cause No. 2357, by leave of court, an amended bill of complaint by the said Wabash, St. Louis & Pacific Railway Company setting forth with more particularity than in said original bill the condition of the lines of railroad belonging to said company, the titles of said company to the various parts thereof, the liens and incumbrances thereon, and the financial condition of said company, all of which was substantially as shown in the final decrees. Said amended bill embraced additional parties defendant and prayed substantially the relief in said original bill.

On the 26th day of June, 1884, the said receivers filed in said court in said cause a petition as follows:

119 In the Circuit Court of the United States for the Eastern District of Missouri. March Term, A. D. 1884.

WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, Complainant, *against* THE CENTRAL TRUST COMPANY OF NEW YORK, James Cheney, The Mercantile Trust Company of New York, and Others, Defendants. } In Chancery.

Petition of receivers for advice of court, 1st, as to payment of interest on certain enumerated bonds; 2d, as to payment of interest on bonds of Chicago Division; 3d, as to payment of rental of Eel river railroad; 4th, as to payment of interest on Detroit, Butler, and St. Louis railroad; 5th, as to how they shall keep accounts of the earnings and expenses of certain enumerated lines. Filed June 26, 1884.

Now come Solon Humphreys and Thomas E. Tutt, receivers of all the property, rights, and credits of the Wabash, St. Louis & Pacific Railway Company, and respectfully state to the court that from the incoming rents and profits of said property they were un-
120 able to pay on the first day of June, 1884, the interest falling due on said date upon the following bonds and other obligations of said company, to wit:

1st. Twelve hundred and ten (1,210) bonds, of one thousand dollars each, known as the first-mortgage bonds of the Havana Division, issued in December, 1880, due thirty years after date, and bearing interest, at the rate of six per cent. per annum, payable semi-annually on the first days of June and December in each year, and which interest, so due on said first day of June, amounted to $36,300.00.

2d. Two thousand (2,000) bonds, of one thousand dollars each, known as the first-mortgage bonds of the Indianapolis Division, issued June, 1881, due forty years after date, and bearing interest, at the rate of six per cent. per annum, payable semi-annually on the first days of June and December in each year, and which interest, so due on said first day of June, amounted to $60,000.00.

3d. Seventeen thousand (17,000) bonds, of one thousand dollars each, known as the general-mortgage bonds, issued June, 1880, due forty years after date, and bearing interest, at the rate of six per cent. per annum, payable semi-annually on the first days of June and December in each year, and which interest, so due on said first day of June, amounted to $480,000.00.

4th. Two thousand seven hundred and ninety-two (2,792) shares of the capital stock of the Eel River Railroad Company on which the Wabash, St. Louis and Pacific Railway Company had obligated itself to pay dividends at the rate of four per cent. per annum, and on which the quarterly dividend due on said first day of June was $27,920.00.

121 Your petitioners further state that the Wabash, St. Louis and Pacific Railway Company was organized on the tenth

day of November, 1879, by the consolidation of what was formerly known as the "Wabash Railway Company" (a corporation previously existing under the laws of Illinois, Indiana, and Ohio) with the St. Louis, Kansas City and Northern Railway Company (a corporation previously existing under the laws of Missouri), which companies were, at and before said date, possessed of certain valuable lines of railroad in the States of Missouri, Iowa, Illinois, Indiana, and Ohio, but which were held by them subject to mortgages and deeds of trust previously executed to secure certain bonds and obligations, to wit:

1st. Six thousand (6,000) bonds of one thousand dollars each, secured by first mortgage on the North Missouri railroad, (which bonds were) issued in March, 1865, due thirty years after date, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July of each year, and on which the semi-annual interest falling due on the first day of July, 1884, amounts to $210,000.00.

2d. Six hundred and twenty-six (626) bonds of one thousand dollars each, secured by first mortgage on the St. Louis, Council Bluffs and Omaha railroad, (which bonds were) issued in July, 1878, due thirty years after date, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the semi-annual interest due on said first day of July amounts to $18,780.00.

3d. Two hundred and sixty-four (264) bonds of one thousand dollars each, known as the first-mortgage bonds of the Clarinda Branch, issued in July, 1879, due forty years after date, with
122 interest at the rate of six per cent. per annum, payable semi-annually on the first days of February and August in each year, and on which the semi-annual interest due on the first day of August, 1884, amounts to $7,920.00.

4th. Nine hundred (900) bonds of one thousand dollars each, secured by first mortgage of the Toledo and Illinois railroad, issued in September, 1853, and falling due in August, 1890, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of February and August in each year, and on which the semi-annual interest falling due on said first day of August amounts to $31,500.00.

5th. Two thousand five hundred (2,500) bonds of one thousand dollars each, secured by first mortgage on the Lake Erie, Wabash and St. Louis railroad, issued in August, 1853, falling due in August, 1890, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of February and August in each year, and on which the semi-annual interest falling due on said first day of August amounts to $87,500.00.

6th. Twenty-four hundred and ninety-six (2,496) bonds of one thousand dollars each, secured by first mortgage on what was known as the Great Western railroad, issued in May, 1863, and falling due in May, 1888, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of February and August

in each year, and on which the interest falling due on said first day of August amounts to $87,360.00.

7th. Three hundred (300) bonds of one thousand dollars each, secured by first mortgage on what was known as the Illinois and Southern Iowa railroad, issued in March, 1862, due twenty
123 years after date, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of February and August in each year, and on which the semi-annual interest falling due on said first day of August amounts to $9,000.

8th. Twenty-seven hundred (2,700) bonds, of one thousand dollars each, secured by first mortgage on what was known as the Decatur and East St. Louis railroad, issued in June, 1869, due twenty years after date, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of February and August in each year, and on which the semi-annual interest falling due on said first day of August amounts to $94,500.00.

9th. Twenty-six hundred and ten (2,610) bonds, of one thousand dollars each, known as the consolidated sinking-fund bonds of the Toledo, Wabash and Western railroad, issued in February, 1867, due forty years after date, with interest at the rate of seven per cent. per annum, payable quarterly on the first days of February, May, August, and November in each year, and on which the interest falling due on said first day of August amounts to $45,675.00.

10th. Eleven hundred and thirty-one (1,131) bonds, of five hundred dollars each, known as the Wabash railway funded-debt bonds, issued in 1877, due thirty years after date, with interest at the rate — seven per cent. per annum, payable semi-annually on the first days of February and August in each year, and on which the semi-annual interest falling due on said first day of August amounts to $19,792.50.

11th. Fourteen hundred and one (1,401) bonds, of one thousand dollars each, known as the Wabash railway funded-debt bonds, graduated, issued in 1877, due thirty years after date, with
124 interest at the rate of six per cent. per annum, payable semi-annually on the first days of February and August in each year, and on which the semi-annual interest falling due on the said first day of August amounts to $42,030.00.

12th. Six hundred and nine (609) bonds, of five hundred dollars each, secured by first mortgage on what was known as the Brunswick and Chillicothe railroad, issued August 1st, 1878, falling due in August, 1903, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of February and August in each year, and on which the semi-annual interest falling due on said first day of August amounts to $9,135.

13th. Three thousand (3,000) bonds, of one thousand dollars each, known as the real estate and railway mortgage bonds of the St. Louis, Kansas City and Northern Railway Company, issued in September, 1874, due twenty-one years after date, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of March and September in each year, and on which the

semi-annual interest falling due on the first day of September, 1884, amounts to the sum of $105,000.

14th. Certain certificates of indebtedness, amounting to the sum of $552,975.50, known as the graduated script certificates, issued in 1877, with interest at the rate of six per cent. per annum, payable on the first days of September, October, and November, and on which the interest falling due on said first day of September amounts to $11,059.51.

15th. Certificates of indebtedness amounting to the sum of $115,385, known as seven per cent. script certificates, issued
125 in 1877, with interest at the rate of seven per cent. per annum, payable on the first days of September, October, and November, and on which the interest falling due on said first day of September amounts to $2,692.31.

16th. Two thousand (2,000) bonds of one thousand dollars each, known as the Wabash railway series of 1879, issued in May of said year, due thirty years after date, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October in each year, and on which the semi-annual interest falling due on the first day of October, 1884, amounts to $70,000.

17th. One thousand (1,000) bonds of one thousand dollars each, known as the first-mortgage bonds of the St. Charles Bridge Company, issued in October, 1878, due thirty years after date, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of April and October in each year, and on which the interest falling due on said first day of October amounts to $30,000.

18th. Seven hundred and seventy-seven (777) bonds of five hundred dollars each, known as the second-mortgage bonds on the St. Charles Bridge, issued in 1878, falling due in 1903, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October of each year, and on which the interest falling due on said first day of October amounts to $13,597.50.

19th. Six hundred and forty-five (645) bonds of five hundred dollars each, known as the first-mortgage bonds of the St. Louis, Ottumwa and Cedar Rapids Railroad Company, issued October 1st, 1875, due in October, 1897, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October of each year, and on which the semi-annual interest falling due on said first day of October amounts to $11,287.50.

126 20th. Twenty-three hundred and fifty (2,350) bonds of one thousand dollars each, known as the first-mortgage bonds of the Omaha Division of the St. Louis, Kansas City and Northern railway, issued February, 1879, due forty years after date, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October in each year, and on which the semi-annual interest falling due on said first day of October amounts to $82,250.

21st. Five hundred (500) bonds of one thousand dollars each, known as the first-mortgage bonds of the Quincy and Toledo rail-

road, issued in May, 1865, falling due in November, 1890, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each year, and on which the semi-annual interest falling due on the first day of November, 1884, is $17,500.

22nd. One thousand (1,000) bonds of one thousand dollars each, known as the second-mortgage bonds of the Toledo and Wabash railroad, issued in September, 1853, due forty years after date, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each year, and on which the semi-annual interest due on said first day of November is $35,000.

23rd. Fifteen hundred (1,500) bonds of one thousand dollars each, known as the second-mortgage bonds of the Wabash and Western railroad, issued in October, 1858, falling due in May, 1893, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each year, and on which the semi-annual interest due on said first day of November amounts to $52,500.

127 24th. Twenty-five hundred (2,500) bonds of one thousand dollars each, known as the second-mortgage bonds of the Great Western railroad of 1859, issued in May, 1865, and falling due in May, 1893, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November of each year, and on which the semi-annual interest falling due on said first day of November amounts to $87,500.

25th One hundred (100) bonds of one thousand dollars each, known as the first-mortgage bonds of the Boone county and Boonville railroad, issued in May, 1873, and falling due in May, 1903, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November of each year, and on which the semi-annual interest due on said first day of November is $3,500.

26th. Five hundred (500) bonds of one thousand dollars each, known as the first-mortgage bonds of the Hannibal and Naples Railroad Company, issued in May, 1879, due thirty years after date, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of June and December of each year, and on which the semi-annual interest due on the first day of December, 1884, amounts to $17,500.

Your petitioners further state that the Wabash, St. Louis and Pacific, for the purpose of increasing its business and revenue and thereby adding to the value of all lines previously owned and operated by it, acquired by consolidation with the Chicago and Strawn Railway Company in 1880 what is now known as its Chicago Division, which division extends from Strawn, in the county of Livingston, to the city of Chicago, in the State of Illinois, subject,

128 however, to the payment of the principal and interest of four thousand five hundred (4,500) bonds of one thousand dollars each, secured by a first mortgage thereon, which bonds were issued in July, 1880, due thirty years after their date, with interest at the

rate of five per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the semi-annual interest due on the first day of July, 1884, is $112,500.

That said company for the same purpose also acquired in 1880, by consolidation with the Detroit, Butler and St. Louis Railroad Company, a line extending from Butler, in the State of Indiana, to Detroit Junction, in the State of Michigan, subject, however, to the payment of the principal and interest of two thousand and fifty-two (2,052) bonds of one thousand dollars each, secured by first mortgage thereon, which bonds were issued in July, 1881, due forty years after date, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the semi-annual interest due on the first day of July, 1884, amounts to $61,560.

Your petitioners further state that they are advised and believe that each and all of the aforesaid lines of railroad which were owned or controlled either by the "Wabash Railway Company" or by the "St. Louis, Kansas City and Northern Railway Company" before their consolidation in 1879 under the name of the "Wabash, St. Louis and Pacific Railway Company," together with the aforesaid Chicago and Strawn railroad which was subsequently acquired in the manner hereinbefore recited, have at all times during the five years last past or ever since their construction earned more than enough to pay all their operating expenses, the cost of
129 maintenance and interest upon the several series of bonds above described, and respectively secured upon them by the mortgages or deeds of trust aforesaid.

Your petitioners state that while they are informed and believe that the earnings of the line of railroad extending from Logansport, in the State of Indiana, to Butler, in said State, and known as the Eel River railroad, have not been sufficient to pay the operating expenses, the cost of maintenance, and the rental of four per cent. per annum on twenty-seven thousand nine hundered and twenty (27,920) shares of the capital stock of said Eel River Railroad Company, as provided in the lease under which the Wabash, St. Louis and Pacific Railway Company acquired the same, and while they are further informed and believe that the earnings of the line extending from Butler, in the State of Indiana, to Detroit Junction, in the State of Michigan, have not as yet been sufficient to pay its operating expenses, the cost of maintenance, and interest upon the bonds secured by first mortgage on the same, yet, after the most careful consideration of the matter, they express the opinion that it would not be wise or for the best interests of said company or its several creditors for your petitioners to lose control of said lines, extending as they do to the city of Detroit and there connecting with the systems of railroads reaching eastward therefrom.

Your petitioners further state that the Wabash, St. Louis and Pacific Railway Company, after its organization as aforesaid, acquired, by purchase, lease, and consolidation, divers other lines of railroad in said States, subject, however, to certain mortgages and

deeds of trust, previously executed, to secure bonds and other obligations as follows, to wit:

1st. The Quincy, Missouri and Pacific railroad, subject to a
130 mortgage to secure twelve hundred and four (1,204) bonds of one thousand dollars each, known as the first-mortgage bonds of said Quincy, Missouri and Pacific Railroad Company, issued in October, 1879, due thirty years after date, and bearing interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the interest falling due on the first day of July, 1884, amounts to the sum of $36,120.00.

2d. The Indianapolis, Peru and Chicago railroad, subject to a mortgage executed to secure two hundred and seventy-five (275) bonds of one thousand dollars each, known as the first-mortgage bonds of said Indianapolis, Peru and Chicago Railroad Company, issued in July, 1871, due twenty years after date, and bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the interest falling due on said first day of July amounts to $9,625.00.

3d. The Chicago, Cincinnati and Louisville railroad, subject to mortgage executed to secure one thousand (1,000) bonds of one thousand dollars each, known as the first-mortgage bonds of said Chicago, Cincinnati and Louisville Railroad Company, issued in January, 1867, due twenty years after date, and bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the interest falling due on said first day of July amounts to $35,000.

4th. The Toledo, Peoria and Western railroad, subject to a mortgage executed to secure forty-five hundred (4,500) bonds of one thousand dollars each, known as the first-mortgage bonds of said Toledo, Peoria and Western Railroad Company, issued May 22, 1880, due May 1, 1907, and bearing interest at the rate of seven per
131 cent. per annum, payable quarterly on the first days of January, April, July, and October in each year, and on which the interest falling due on said first day of July is the sum of $78,750.

5th. The Toledo, Peoria and Western, subject to a mortgage executed to secure eleven hundred and eighty-nine (1,189) bonds of one thousand dollars each, known as the preferred income first-mortgage bonds of said Toledo, Peoria and Western Railroad Company, issued —— —, 188-, due in — years after date, and bearing interest at the rate of four per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the interest falling due on said first day of July amounts to $23,780.

6th. The Havana, Rantoul and Eastern railroad, subject to a mortgage executed to secure three hundred (300) bonds of one thousand dollars each, known as the first-mortgage bonds of said Havana, Rantoul and Eastern Railroad Company, issued in July, 1879, due in July, 1897, and bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the interest falling due on said first day of July amounts to $10,500.

7th. The Centerville, Moravia and Albia railroad, subject to a mortgage executed to secure four hundred (400) bonds of one thousand dollars each, known as the first-mortgage bonds of said Centerville, Moravia and Albia Railroad Company, issued in ——, 188–, due — years after date, bearing interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the interest falling due on said first day of July is the sum of $12,000.

132 8th. What is known as the Cairo Division, subject to a mortgage executed to secure thirty-eight hundred and fifty-seven (3,857) bonds of one thousand dollars each, known as the first-mortgage bonds of said Cairo Division, issued in October, 1881, due fifty years after date, with interest at the rate of five per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the interest falling due on said first day of July amounts to $96,425.

9th. The Champaign, Havana and Western railroad, subject to a mortgage executed to secure thirty-four hundred and nine (3,409) bonds of one hundred dollars each, known as the first-mortgage bonds of said Champaign, Havana and Western Railroad Company, issued in ——, 188–, due — years after date, and bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the interest falling due on said first day of July amounts to $11,931.50.

10th. What is known as the Iowa Division of said railroad, subject to a mortgage executed to secure twenty-two hundred and sixty-nine (2,269) bonds of one thousand dollars each, secured by first mortgage on said Iowa Division, issued in March, 1881, due forty years after date, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of March and September in each year, and on which the interest falling due on the first day of September, 1884, amounts to $68,070.

Your petitioners further state that they are informed and believe that the earnings of none of the lines or divisions last above described have at any time since their acquisition been sufficient to pay their operating expenses, the cost of their maintenance,

133 and interest on the several series of bonds and other obligations above described and secured upon each of them, respectively, by mortgage or deeds of trust.

Your petitioners further state that from the incoming rents and profits of the property now in their possession, under a former order of this honorable court, they believe they can, until otherwise directed, pay all the expenses of operating the same, the cost of maintenance, and all interest from time to time maturing on all bonds or other obligations secured by mortgage or deeds of trust on the several lines or divisions thereof that were owned or possessed either by the "Wabash Railway Company" or by the "St. Louis, Kansas City and Northern Railway Company" before their consolidation as aforesaid under the name of the "Wabash, St. Louis and Pacific Railway Company."

Wherefore, inasmuch as the incoming rents and profits from the

lines and each of them that were united as aforesaid in 1879 by consolidation as aforesaid have hitherto been and will, as your petitioners believe, continue to be more than sufficient to pay their operating expenses, the cost of maintenance, and interest on all the aforesaid bonds or other obligations secured upon them or either of them by mortgage or deed of trust, and inasmuch as the existence of said consolidated company as an entirety, with all its rights and franchises, will be preserved and the rights and interests of its several creditors will be best protected and secured by paying from time to time the interest upon the bonds and other obligations secured by mortgage on the several lines and divisions last aforesaid; and inasmuch as the earnings upon the aforesaid Chicago Division have been and will, as your petitioners believe, continue to be more
134 than sufficient to pay its operating expenses, the cost of maintenance, and all interest on bonds secured thereon by mortgage; and inasmuch as your petitioners believe (for the reasons hereinbefore stated) that it would be a detriment to all said lines and work great injury to said company and all its creditors for your petitioners to lose control of the line extending from Logansport, in the State of Indiana, to Detroit, in the State of Michigan; and inasmuch as the earnings upon the several other lines hereinbefore mentioned as having been acquired by the Wabash, St. Louis and Pacific Railroad Company have not been and, as your petitioners are informed and believe, will not for the present be sufficient to pay operating expenses, the cost of maintenance, and interest on the several series of bonds secured by mortgage or deed of trust upon them, respectively:

Your petitioners therefore pray for the advice of this honorable court with respect to the several matters following, to wit:

1st. As to whether your petitioners shall, until the further orders of this court, pay the interest as the same from time to time matures upon the bonds or other obligations secured by mortgage on the several lines or divisions of said road at and before the date of the consolidation of the Wabash Railway Company with the St. Louis, Kansas City and Northern Railway Company.

2d. As to whether your petitioners shall, until the further orders of this court, pay the interest upon the bonds secured by mortgage upon what is known as the Chicago Division of said railroad.

3d. As to what they shall do with respect to the payment of rental upon the line extending from Logansport to Butler, in the State of Indiana.

135 4th. As to what they shall do with respect to the payment of interest upon the bonds secured by mortgage on the line extending from Butler, Indiana, to Detroit Junction, in the State of Michigan.

5th. As to how they shall dispose of the earnings and keep the accounts of the earnings and of the operating expenses and cost of maintenance of the several other lines or divisions aforesaid and which have not and which, your petitioners are informed and believe, will not for the present be enough to pay their operating ex-

penses, the cost of maintenance, and interest on the several series of bonds secured by mortgage upon them, respectively.

SOLON HUMPHREYS AND
THOMAS E. TUTT, *Receivers*,
By WELLS H. BLODGETT, *Solicitor*.

On the 28th day of June, 1884, the special master in chancery, to whom was referred the last-mentioned petition, made the following report, which was approved by the court:

136 In the Circuit Court of the United States for the Eastern District of Missouri. March Term, A. D. 1884.

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Complainants,
against
THE CENTRAL TRUST COMPANY OF NEW YORK, James Cheney, The Mercantile Trust Company of New York, and Others, Defendants.
} In Chancery.

Report of Edmund T. Allen, Special Master, and Order of Court Made Thereon.

1st. Concerning the payment of interest on certain bonds herein mentioned.

2d. Concerning payment of interest on bonds of Chicago Division.

3d. Concerning the keeping of accounts of earnings and expenses of certain lines.

Filed June 28th, 1884.

In the matter of the petition of Solon Humphreys and Thomas E. Tutt, receivers of all the property, rights, and credits of
137 the Wabash, St. Louis and Pacific Railway Company, wherein they pray for the advice of this honorable court with respect to the following, among other, matters, to wit:

1st. As to whether they shall, until the further orders of the court, pay the interest, as the same from time to time matures, upon the bonds or other obligations secured by mortgage on the several lines or divisions of said road at and before the date of the consolidation of the Wabash railway with the St. Louis, Kansas City and Northern railway.

2d. As to whether they shall, until the further orders of this court, pay the interest on the bonds secured by mortgage upon what is known as the Chicago Division of said railroad.

* * * * * * *

5th. As to how they shall dispose of the earnings and keep the accounts of the earnings and of the operating expenses and cost of maintenance of the several other lines or divisions aforesaid, and which have not and which your petitioners are informed and believe will not for the present be enough to pay their operating expenses, the cost of maintenance, and interest on the several series of bonds secured by mortgage upon them, respectively.

I beg leave to report that, upon the testimony taken before me on the 26th and 27th days of June, 1884 (a transcript of the oral evidence being herewith submitted), I find that the Wabash, St. Louis and Pacific Railway Company was organized on the 10th day of November, 1879, by consolidation of the lines of what was formerly known as the "Wabash Railway Company" (a corporation which previously existed under the laws of Illinois, Indiana, and Ohio) with the line of the St. Louis, Kansas City and Northern
138 Railway Company (a corporation previously existing under the laws of Missouri), and that said companies were, at and before the date of their consolidation, possessed of certain lines of railroad in the States of Missouri, Iowa, Illinois, Indiana, and Ohio, but which were held by them subject to mortgages and deeds of trust previously executed to secure certain bonds and obligations on parts or divisions thereof.

And I further find that the Wabash, St. Louis and Pacific Railway Company, after its organization, acquired in 1880 what is now known as its Chicago Division, subject, however, to the lien of a certain mortgage previously executed to secure the payment of the principal and interest of forty-five hundred (4,500) bonds of one thousand dollars each, due thirty years after date, with interest at the rate of five per cent. per annum, payable semi-annually on the first days of January and July in each year, and on which the semi-annual interest due on the first day of July, 1884, is $112,500.

And I further find that all the lines of railroad that were owned or controlled either by the Wabash Railway Company or by the St. Louis, Kansas City and Northern Railway Company, and which are hereinafter mentioned, have, ever since their consolidation, earned more than enough to pay all the operating expenses, the cost of maintenance, taxes, and interest upon the several series of bonds hereinafter described and secured upon them, respectively, — mortgage or deed of trust; and that the Chicago Division has also, ever since the date of its acquisition by the Wabash, St. Louis and Pacific Railway Company, earned more than enough to pay all its operating expenses, the cost of maintenance, taxes, and interest upon the forty-five hundred (4,500) bonds of one thousand dollars each, secured thereon by mortgage as aforesaid.

139 Wherefore I respectfully recommend that the court make and enter in said cause the following order, to wit:

It is ordered that, until otherwise directed, the receivers herein, from the incoming rents and profits of said property, after meeting such other obligations as they have been directed to discharge by the former orders of this court, pay from whatever balance may remain in their hands the interest, as the same shall from time to time mature, upon the following bonds or other obligations secured by mortgage on the several lines or divisions of the "Wabash Railway Company" and of the "St. Louis, Kansas City and Northern Railway Company," before the date of their consolidation under the name of the "Wabash, St. Louis and Pacific Railway Company," to wit:

On the first days of January and July (or as soon thereafter as practicable) the semi-annual interest, at seven per cent. per annum, then due on six thousand (6,000) bonds of one thousand dollars each, issued in 1865 and secured by mortgage upon the North Missouri railroad, amounting to $210,000.00.

The semi-annual interest, at six per cent. per annum, then due on six hundred and twenty-six (626) bonds of one thousand dollars each, issued in 1878 and secured by mortgage on the St. Louis, Council Bluffs and Omaha railroad, amounting to $18,780.00.

On the first days of February and August (or as soon thereafter as practicable) .the semi-annual interest, at six per cent. per annum, then due on two hundred and sixty-four (264) bonds of one thousand dollars each, issued in July, 1879, and secured by mortgage on the Clarinda and St. Louis railroad (otherwise known as the Clarinda Branch), amounting to $7,920.00.

140 The semi-annual interest, at seven per cent. per annum, then due, on nine hundred bonds, of one thousand dollars each, issued in 1853 and secured by mortgage on the Toledo and Illinois railroad, amounting to $31,500.00.

The semi-annual interest, at seven per cent. per annum, then due, on twenty-five hundred (2,500) bonds, of one thousand dollars each, issued in 1853 and secured by mortgage on the Lake Erie, Wabash and St. Louis railroad, amounting to $87,500.00.

The semi-annual interest, at seven per cent. per annum, then due, on twenty-four hundred and ninety-six (2,496) bonds, of one thousand dollars each, issued in 1863 and secured by mortgage on what is known as the Great Western railroad, amounting to $87,360.00.

The semi-annual interest, at the rate of six per cent. per annum, then due, on three hundred (300) bonds, of one thousand dollars each, issued in 1862 and secured by mortgage on the Illinois and Southern Iowa railroad, amounting to $9,000.

The semi-annual interest, at seven per cent. per annum, then due, on two thousand seven hundred (2,700) bonds, of one thousand dollars each, issued in June, 1869, and secured by mortgage on the Decatur and East St. Louis railroad, amounting to $94,500.00.

On the first days of February, May, August, and November (or as soon thereafter as practicable) the quarterly interest, at seven per cent. per annum, then due, on two thousand six hundred and ten (2,610) bonds, of one thousand dollars each, issued in 1867 and secured by mortgage on the Toledo, Wabash and Western railroad; amounting to $45,675.00.

141 On the first days of February and August (or as soon thereafter as practicable) the semi-annual interest on eleven hundred and thirty-one (1,131) bonds, of five hundred dollars each, issued 1877, known as the Wabash railway funded-debt bonds, amounting to $19,792.50.

The semi-annual interest, at six per cent. per annum, then due, on fourteen hundred and one (1,401) bonds, of one thousand dollars each, issued in 1877, known as the Wabash railway funded-debt bonds, graduated, amounting to $42,030.00.

The semi-annual interest, at six per cent. per annum, then due, on six hundred and nine (609) bonds, of five hundred dollars each, issued in August, 1878, and secured by mortgage on the Brunswick and Chillicothe railroad, amounting to $9,135.

On the first days of March and September (or as soon thereafter as practicable) the semi-annual interest, at seven per cent. per annum, then due, on three thousand (3,000) bonds, of one thousand dollars each, issued in September, 1874, and secured by mortgage on the St. Louis, Kansas City and Northern railroad, amounting to the sum of $105,000.

On the first days of September, October, and November (or as soon thereafter as practicable) the interest, at six per cent. per annum, then due, on the sum of $522,975.50 on what are known as graduated scrip certificates, issued in 1877, secured by mortgage on the Wabash railway, amounting to $11,059.51.

142 On the first days of September, October, and November (or as soon thereafter as practicable) the interest, at seven per cent. per annum, then due, on the sum of $115,385 in certificates of indebtedness issued in 1877 and secured by mortgage on the Wabash railway, amounting to $2,692.31.

On the first days of April and October (or as soon thereafter as practicable) the semi-annual interest, at seven per cent. per annum, then due, on two thousand (2,000) bonds, of one thousand dollars each, issued in May, 1870, and secured by mortgage on the Wabash railway, amounting to $70,000.

The semi-annual interest, at six per cent. per annum, then due, on one thousand (1,000) bonds, of one thousand dollars each, issued in 1878 and secured by mortgage on the St. Charles bridge, amounting to $30,000.00.

The semi-annual interest, at seven per cent. per annum, then due, on seven hundred and seventy-seven (777) bonds, of five hundred dollars each, issued in 1878 and secured by mortgage on the St. Charles bridge, amounting — $13,597.50.

The semi-annual interest, at seven per cent. per annum, then due, on six hundred and forty-five (645) bonds, of five hundred dollars each, issued in 1875 and secured by mortgage on St. Louis, Ottumwa and Cedar Rapids railway, amounting to $11,287.50.

The semi-annual interest, at seven per cent. per annum, then due, on twenty-three hundred and fifty (2,350) bonds, of one thousand dollars each, issued in February, 1879, and secured by mortgage on the Omaha Division of the St. Louis, Kansas City and Northern railway, amounting to $82,250.

On the first days of May and November (or as soon thereafter as practicable) the semi-annual interest, at seven per cent. per
143 annum, then due, on five hundred (500) bonds, of one thousand dollars each, issued in 1865 and secured by mortgage on the Quincy and Toledo railroad, amounting to $17,500.00.

The semi-annual interest, at seven per cent. per annum, then due, on one thousand (1,000) bonds, of one thousand dollars each, issued in September, 1853, and secured by mortgage on the Toledo and Wabash railroad, amounting to $35,000.00.

The semi-annual interest, at seven per cent. per annum, then due, on fifteen hundred (1,500) bonds, of one thousand dollars each, issued in 1858 and secured by mortgage on the Wabash and Western railroad, amounting to $52,500.00.

The semi-annual interest, at seven per cent. per annum, then due, on twenty-five hundred (2,500) bonds, of one thousand dollars each, issued in May, 1865, and secured by mortgage on the Great Western railroad of 1859, amounting to $87,500.00.

The semi-annual interest, at seven per cent. per annum, then due, on one hundred (100) bonds, of one thousand dollars each, issued in May, 1873, and secured by mortgage on the Boone County and Booneville railroad, amounting to $3,500.00.

On the first days of June and December (or as soon thereafter as practicable) the semi-annual interest, at seven per cent. per annum, then due, on five hundred (500) bonds, of one thousand dollars each, issued in May, 1879, and secured by mortgage on the Hannibal and Naples railroad, amounting to $17,500.00.

2d. It is further ordered that until otherwise directed the
144 receivers herein, from the incoming rents and profits of said property, after meeting such other obligations as they have been directed to discharge by the former orders of this court, pay from whatever balance may remain in their hands the semi-annual interest at the rate of five per cent. per annum, as the same from time to time falls due on the first days of January and July in each year (or as soon thereafter as practicable), upon the forty-five hundred (4,500) bonds issued in 1880, secured by mortgage on what is known as the Chicago Division of said railway, and amounting to $112,500.

3d. And it is further ordered that the receivers herein, until otherwise directed, keep the accounts of all the earnings and incomes from, as well as the accounts of all the operating expenses, cost of maintenance, and taxes upon, the following lines or divisions of said property separately, to wit:

1. The Detroit, Butler and St. Louis railroad, which extends from Butler, in the State of Indiana, to Detroit Junction, in the State of Michigan.

2. The Eel River railroad, which extends from Logansport to Butler, in the State of Iowa.

3. The Quincy, Missouri and Pacific railroad, commencing at West Quincy and extending to Trenton, in the State of Missouri.

4. The Indianapolis, Peru and Chicago railroad, extending from the city of Indianapolis to Michigan City, in the State of Indiana.

5. The Toledo, Peoria and Western railroad, extending from the State line between the States of Indiana and Illinois to the cities of Hamilton and Warsaw, in the State of Illinois, and Burlington, in the State of Iowa.

145 6. The Havana, Rantoul and Eastern railroad, extending from Williamsport, in the State of Indiana, to Leroy, in the State of Illinois.

7. The Centerville, Moravia and Albia railroad, extending from Centerville to Albia, in the State of Iowa.

8. The Cairo Division, extending from Danville to Cairo, in the State of Illinois.

9. The Champaign, Havana and Western railroad, extending from Urbana to Havana, in the State of Illinois.

10. The Iowa Division, extending from Keokuk to Humeston, in the State of Iowa.

And that said receivers make quarterly reports thereof showing not only the income and expenses of each of the lines aforesaid, but also the methods by which the incomes and expenses of said lines were respectively ascertained.

EDMUND T. ALLEN,
Special Master.

Report confirmed.

On the 20th day of September, 1884, the said receivers filed in said cause in said court the following petition:

146 In the Circuit Court of the United States for the Eastern District of Missouri. September Term, A. D. 1884.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, Complainant,
against
THE CENTRAL TRUST COMPANY OF NEW YORK, JAMES CHENEY, The Mercantile Trust Company of New York, and Others, Defendants.

Solon Humphreys and Thomas E. Tutt, receivers.

Petition of Receivers for Instructions as to Interest Due on Bonds of the Havana, Champaign and Western Division. Filed September 20, 1884.

Now come Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis and Pacific railway, and respectfully state and show unto the court that heretofore, to wit, on the 31st day of March, 1880, the Champaign, Havana and Western Railway
147 Company, a corporation organized and existing under the laws of the State of Illinois and owning a railroad wholly within said State, commencing at the city of Champaign, in the county of Champaign, and extending from thence to the town of White Heath, in the county of Piatt, and from thence by way of Clinton, in the county of De Witt, Lincoln, in the county of Logan, Macon City, in the county of Macon, to Havana, in said Macon county, together with a branch, commencing at said town of White Heath and extending from thence through Monticello, in said county of Piatt, to the city of Macon, in the county of Macon, and being altogether about one hundred and thirty-one (131) miles, more or less, in length, was, together with all its other property and franchises, duly and in all respects, according to the laws of the State of Illinois, consolidated with the Wabash, St. Louis and Pacific Railway Company, and thereupon the same became from thenceforth a part of the system of railroads owned and (until the appointment of your

petitioners as receivers herein) operated by said Wabash, St. Louis and Pacific Railway Company; that afterwards, to wit, on the 1st day of December, 1880, the said Wabash, St. Louis and Pacific Railway Company, by its deed of that date, conveyed to Henry F. Spaulding and John T. Terry all the railroad above described, together with all its appurtenances, in trust to secure the payment of the principal and interest of one thousand six hundred bonds of one thousand dollars each, dated on the said 1st day of December, 1880, payable thirty years after date, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of June and December, in each year, but your petitioners state, upon information and belief, that only one thousand two hundred and ten of the aforesaid bonds have been issued.

Your petitioners further show that previously, to wit, on the
148 first day of July, 1879, the said Champaign, Havana and Western Railway Company had executed its deed of trust to Henry W. Ford and Richard S. Brock, conveying to them in trust the entire railway and property above described, to secure the payment of the principal and interest of three hundred and fifty thousand dollars ($350,000.00) in the "first-mortgage preferred" bonds of said company, bearing date on the said first day of July, 1879, and one million one hundred thousand dollars in what are known as the "first-mortgage common bonds" of said company, which said "first-mortgage preferred bonds" fall due thirty years after date and bear interest at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each year.

And your petitioners state, upon information and belief, that the above-mentioned "first-mortgage preferred bonds" to the amount of three hundred and fifty thousand dollars ($350,000.00) is all the indebtedness of said Champaign, Havana and Western Railway Company now outstanding and secured by said mortgage of July 1st, 1879, thereby making the total indebtedness now secured by the two mortgages aforesaid on the lines of said Champaign, Havana and Western railway, as above described, one million five hundred and sixty thousand dollars, of which sum one million two hundred and ten thousand dollars bears interest at the rate of six per cent. and three hundred and fifty thousand dollars thereof bears interest at the rate of seven per cent., making the total interest annually due on said indebtedness the sum of ninety-seven thousand one hundred dollars ($97,100.00), of which sum twelve thousand two hundred and fifty dollars ($12,250.00) falls due on the first day of January, thirty-six thousand three hundred dollars ($36,300.00) falls due on the first day of June, twelve thousand two hundred and fifty dollars ($12,250.00) on the first day of July, and the sum of
149 thirty-six thousand three hundred dollars ($36,300.00) on the first day of December in each year.

Your petitioners further state that on or about the 1st day of June, 1880, the said Wabash, St. Louis and Pacific Railway Company executed its bonds in the sum of fifty millions dollars ($50,000,000.00), falling due on the 1st day of June, 1920, with interest from date at the rate of six per cent. per annum, payable semi-annually on the first

days of June and December in each year, which bonds are known as the "general mortgage bonds" of said Wabash, St. Louis and Pacific Railway Company, and that to secure the payment of the principal and interest thereof said Wabash, St. Louis and Pacific Railway Company, on said first day of June, 1880, executed and delivered to the Central Trust Company of New York and James Cheney, of the State of Indiana, a certain indenture of mortgage known as the "general mortgage," wherein it conveyed to said trustees, for the purposes aforesaid, all of the railroad hereinbefore described, together with its interest in all the other lines of railroad owned or operated by it in the States of Missouri, Iowa, Illinois, Indiana, Ohio, and Michigan; but your petitioners state that they are informed and believe that the lien of the mortgage last aforesaid is inferior to the lien of the aforesaid conveyance executed July 1st, 1879, by said Champaign, Havana and Western Railway Company to Ford and Brock, as trustees, and also inferior to the lien of the aforesaid conveyance executed December 1st, 1880, by said Wabash, St. Louis and Pacific Railway Company to Henry F. Spaulding and John T. Terry, trustees, as aforesaid.

Your petitioners further state that they are informed and believe that of the aforesaid fifty thousand "general mortgage bonds"
150 only seventeen thousand thereof are issued now outstanding and secured by the "general mortgage" aforesaid.

Your petitioners further state that on the first day of June, 1884, both the said Wabash, St. Louis and Pacific Railway Company and your petitioners, as the receivers of all its property and income, failed and neglected to pay the semi-annual interest, amounting to $36,300.00, then due on the aforesaid one thousand two hundred and ten bonds so issued by said Wabash, St. Louis and Pacific Railway Company on the first day of December, 1880, and that said interest has not yet been paid; and, furthermore, that on the first day of July, 1884, the said Wabash, St. Louis and Pacific Railway Company, as well as your petitioners, as receivers of all its property and income, also failed and neglected to pay the semi-annual interest, amounting to $12,250.00, then due on the said $350,000.00 of the bonds of said Champaign, Havana and Western Railway Company, issued on the first day of July, 1879, and that said interest has not yet been paid.

Your petitioners further state that they are informed and believe that said "Champaign, Havana and Western railway" is worth much more than the amount of the aforesaid mortgage debts of $350,000.00 and $1,210,000.00, and that under ordinary circumstances, with proper and skilful management, with average crops and business upon and along the line thereof, said road would annually earn a sum sufficient to pay all its operating expenses, the cost of maintenance, the interest on the two series of mortgage bonds last aforesaid, and leave a considerable surplus to be applied to the payment of interest upon the "general mortgage bonds" of said company; and your petitioners further state that the revenue derived from business originating along the line of said "Cham-
151 paign, Havana and Western railway" and brought by it to

the main line of said Wabash, St. Louis and Pacific railway, and delivered to it for transportation, will contribute largely to the income of said main line and to the raising of sufficient revenue for the payment of interest on said "general mortgage bonds" and other debts of said company.

Your petitioners further state that they are informed and believe that, owing to a partial failure of the crops for the past three years in the section of country through which said railway is constructed, the business and income of said railroad have been reduced far below what might, with reasonable certainty, be expected in all ordinary seasons.

Your petitioners further state that to put said road in good order and render it in all respects suitable and safe for the transaction of business the said Wabash, St. Louis and Pacific Railway Company did, after its acquisition thereof, expend large sums of money in permanently improving and bettering its condition; and your petitioners further state that they are informed and believe that the crops along the line of said railway for the present year, now fully matured, are such as to reasonably and fairly induce and warrant a belief that during the next twelve months the income from the business of said road will be increased nearly, if not quite, one hundred per cent. over what it has been during any one of the three years last past.

Wherefore, considering the large sums of money heretofore spent by said Wabash, St. Louis and Pacific Railway Company in permanently improving the condition of said property, that manifestly there is soon to be a large increase in the business of said line, and that the earnings thereof will, in the immediate future, not
152 only be sufficient to pay the cost of maintenance and operating the same and interest on said first and second mortgage bonds, but that there will, as your petitioners believe, be a large surplus that can be applied from time to time to the payment of interest on said "general mortgage bonds" or to the payment of the other indebtedness of said company, all of which will render said line of great value to the said Wabash, St. Louis and Pacific Railway Company, as well as to all the creditors thereof, your petitioners therefore pray for the advice and directions of the court in the premises, and that your honors make such order concerning the payment of interest now due and to become due on the aforesaid "first" and "second" mortgage bonds as to your honors shall seem meet.

SOLON HUMPHREYS,
THOS. E. TUTT, *Receivers.*

On the 15th day of October, 1884, the said court in said cause rendered the following opinion on said last-mentioned petition:

153 In the Circuit Court of the United States for the Eastern District of Missouri.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, Complainant,
against
THE CENTRAL TRUST COMPANY OF NEW YORK, JAMES Cheney, The Mercantile Trust Company of New York, and Others, Defendants.
No. 2357.

Remarks of Treat, J. (Orally), on Havana Division Bonds.

OCTOBER 15, 1884.

Mr. SMITH: I presented on yesterday the report of the master on the petition of the receivers for instructions as to the bonds of the Havana Division of the Wabash road, and your honor suggested that it should be brought up again this morning. I am ready to present it if your honor is ready to hear it.

(The petition was then read.)

154 THE COURT: I stated at an early day, and Judge Brewer has gone over that matter (and we are in accord with regard to it), that I am not going to take the money that belongs to the underlying mortgages to pay interest on non-earning branches. If they have got to fail they must fail. I will protect the underlying mortgages especially, and they haven't got enough here to do it.

Mr. SMITH: Your honor remembers these are underlying mortgages on this line.

The COURT: No; not if I understand the petition. They have chosen unwisely, it may be with the exception of a few, to take general mortgage bonds. There are a few underlying.

Mr. SMITH: I will re-read that portion of the petition.

(Petition re-read.)

The COURT: I understand all that. Now what? If the bondholders of the Havana Division are prior in right to the general mortgage, and it is not earning enough, why should the other concerns have their money taken to pay a non-paying concern? That is the question that presses on the mind of the court.

Mr. SMITH: The main reason is a portion of this road they cannot do without; otherwise they must abandon what is one of the most profitable feeders of the road.

The COURT: And therefore to get 12 miles you are going to take 131 and meet these obligations. I cannot grant any such request. We will call a halt on these matters. They say "prospectively" they will do something. Well, "prospectively," it was to be a grand enterprise. It turns out to be a failure. Now, the money
155 that belongs honestly and fairly to one set of men cannot be taken and be applied to another set. Let them go on and foreclose the mortgage.

Mr. SMITH: I suggest the testimony may show——

The COURT: "Prospectively?"

Mr. SMITH: No; I mean as to the actual earnings during the past month or two, and that might aid your honor to reach a proper conclusion.

The COURT: In one case I did it, and that was on the Eel River Division, and I will never do it again.

Mr. SMITH: The receivers state in the petition filed almost a month ago that they are earning a larger sum of money than is necessary to pay the expenses.

The COURT: I will not authorize receivers' certificates (and so said Judge Brewer, and I am fully in accord with him), whereby prior to all obligations the court obligations are to be issued for parties, and have them subordinate other obligations. This is a case of that kind. I will not authorize the receivers, unless they get it out of the earnings of this concern, to pay these matters and issue certificates that override all of these various superior rights. I cannot do it. And then, again, let me remark in regard to these matters, Mr. Smith. I am sorry you have not printed Judge Brewer's remarks, because they are so fully in accord with my views, to wit: These receivers come in and say "prospectively" they will do a great many things; "prospectively," when under this cross-bill that has been filed, if this mortgage is foreclosed, that is the end of it. They must not suppose that prospectively under the orders of this court they are going to run this system of railroads indefinitely. Courts are created for no such purpose, and
156 will not tolerate anything that will keep property in its hands indefinitely. Therefore, when the receiver comes in and says "prospectively" he may make something in the course of two or three years, the court will pay no attention to it. I want to know the funds that are in his hands, that I may require him to administer them, not upon the theory that the court is going to run this railroad an indefinite number of years.

Mr. SMITH: Then I ask that the matter be re-referred to the master, and we will introduce testimony showing the actual earnings of the road in the past three months.

The COURT: That is the important element. If this branch is earning enough to pay its own interest, that is another inquiry; but certainly I am not going to sit here and order that the earnings that belong to other branches in this consolidated system shall be taken to pay concerns that do not earn running expenses. Let them collapse.

Mr. SMITH: Your honor will bear in mind that this is an important link in the Chicago Division, and, as the master says, is entitled to more credit.

The COURT: Yes; 12 miles, and you want to acquire 131 miles, involving a liability of the payment of interest on about two and one-half millions of dollars, when, so far as the court knows, it is not paying operating expenses. As the case stands before me I shall refuse the order, and I want it distinctly understood, as you are of counsel for the receivers, that they are to operate the road upon the theory that this mortgage is to be foreclosed just as soon

as, in the ordinary course of administration under the rules in equity, it can be done, and they must not project their schemes beyond that limited time. When they come in on the theory that the court will keep possession of this road for an indefinite
157 period of time and undertake to operate the road with respect to prospective profits, the court will pay no attention to any thing of the kind. In the ordinary course of administration I propose, if you get the parties in here to foreclose at the March term, to have done with it, and if they want to enter into obligations and operations extending beyond that period the court will pay no attention to it. Let the parties in interest, bondholders and others, attend to that class of questions. The court is not going to run the road for the benefit of anybody except the parties who have legal rights.

Mr. SMITH: I will ask that the petition be re-referred to the master for the purpose of allowing the receiver to introduce additional testimony.

The COURT: You may refer it to him for further testimony, but recollect you have the idea of the court.

Mr. SMITH: I do.

The COURT: And I am very glad Judge Brewer has stated it quite as forcibly as I have done, and we mean what we say—at least I do, as far as I am concerned. I have been fighting this for a series of years, and I am glad that I am supported by Judge Brewer and Justice Miller. We are all in accord.

158 On October 14, 1884, the Central Trust Company of New York and James Cheney, trustees in the Wabash general mortgage, made application to the court for leave to file an amended cross-bill and prayed the court to appoint receivers under the same, and thereupon the court made the following order:

159 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

OCTOBER 14TH, 1884.

WABASH, ST. LOUIS & PACIFIC R'Y CO., Complainant,
vs.
CENTRAL TRUST CO. OF N. Y. *et al.*, Defendants. } 2357.

* * * * * * *

Now come the Central Trust Company and James Cheney, trustees, by their solicitors, and by leave file amended cross-bill subject to exceptions.

And thereupon J. W. Phillips, Esq., counsel for the Central Trust Company and James Cheney, trustees, moved the court orally to appoint receivers of the property of the Wabash, St. Louis & Pacific Railway Company, as prayed for in said amended and original cross-bill, or fix an early day for the hearing of such application; and action on said motion is by the court deferred.

160 On October 14, 1884, the Central Trust Company and James Cheney, trustees in the Wabash general mortgage, filed in said cause No. 2357, by leave of court, their amended cross-bill, in the usual form, praying the foreclosure of said mortgage, and especially praying for the appointment of receivers over said mortgaged railroads and property.

161 On November 17, 1884, the Central Trust Company and Cheney, trustees in the Wabash general mortgage, renewed their application to the court for the appointment of receivers over the property covered by the Wabash general mortgage, and thereupon the court made the following order:

WABASH, ST. LOUIS & PACIFIC R'Y CO., Complainant,
vs.
CENTRAL TRUST CO. OF N. Y. *et al.*, Defendants. } 2357.

The application for appointment of receivers herein under the cross-bills filed is continued for further hearing if the court shall determine to hear arguments hereafter.

162 On April 16, 1885, the Central Trust Company and Cheney, trustees in the Wabash general mortgage, again renewed their application to the court for the appointment of receivers over the property covered by said general mortgage, and thereupon the court made the following order:

In the Circuit Court of the United States for the Eastern District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants,
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants. } Nos. 2357 and 2464, Consolidated Cause.

Order on Application of Central Trust Company for an Order Extending the Receivership to the Consolidated Causes, etc.

APRIL 16, 1885.

The application of the Central Trust Company for an order extending the receivership to the consolidated causes and to the suit brought by the Central Trust Company by its bill to foreclose being heard by the court, it is ordered that said application be, and it is hereby, refused.

163 On the 13th day of January, 1885, the said Central Trust Company of New York and James Cheney, trustees, filed in the circuit court, city of St. Louis, State of Missouri, their bill against said Wabash, St. Louis & Pacific Railway Company and others, defendants, praying substantially for the relief prayed for in their cross-bill filed as aforesaid in said United States circuit court on the 9th day of June, 1884, and on the 10th day of June,

1884, said petition filed in said circuit court of the city of St. Louis was on motion removed to said United States circuit court and became cause No. 2464 in said last-mentioned court.

On the 19th day of March, 1885, by order of the judges of said court, said causes, No. 2357 and No. 2464, were consolidated.

On March 20th, 1885, said receivers filed in said cause in said court the following petition:

"Now come Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis & Pacific Railway Company, and respectfully state and show unto your honors that since they took possession of the system of railroads previously operated by the Wabash, St. Louis & Pacific Railway Company the earnings of many of the branch and leased lines thereof have not been sufficient to pay the operating expenses, interest on their mortgage bonds, and the
164 rentals contracted to be paid by the said Wabash, St. Louis & Pacific Railway Company under the several contracts and leases under which said lines were acquired.

"Your receivers further state that the operating expenses of a number of said roads have, since the receivership, greatly exceeded their earnings, and they herewith submit unto your honors a statement showing in detail the earnings and operating expenses of all the branch and leased lines of said system from May 29th to November 30th, 1884; that your honors may, in this matter, be informed of the relation sustained by the several branch and leased lines aforesaid to the remainder of the system your receivers respectfully state—

"First. That the Wabash, St. Louis & Pacific Railway Company was organized November 10th, 1879, by a consolidation of the stock, property, and franchises of the Wabash Railroad Company with the stock, property, and franchises of the St. Louis, Kansas City & Northern Railway Company.

"Second. That prior to said consolidation the Wabash Railroad Company owned lines of railroad extending westwardly from Toledo, Ohio, through the States of Ohio and Indiana, to Decatur, Illinois; from Decatur to East St. Louis, from Decatur to Meredosia and Naples, from Naples to East Hannibal, from Meredosia via Clayton to Cam Point, from Clayton to Elvaston, from Edwardsville to Edwardsville Crossing, the aggregate length of said lines being six hundred and fifty-two (652) miles.

"Third. That prior to said consolidation the St. Louis, Kansas City & Northern Railway Company owned lines of railroad in the State of Missouri, extending from the Union depot, in the city of St. Louis, to Ferguson, in the county of St. Louis; from Carr & Second streets, in said city, via Ferguson, to Moberly; from Moberly north to the Iowa State line, from Moberly west to Kansas City, from Salisbury to Glasgow and the bridge over the Missouri river at St. Charles, the aggregate length of said lines being
165 three hundred and eighty-eight (388) miles.

"Fourth. That the consolidated company thereupon became the owner (subject to the said mortgages fully described in the

bill) of all the lines of railroad above described, and your receivers state that the earnings thereof for the period commencing May 29th and ending November 30th, 1884, were insufficient to pay their operating expenses and interest on all the bonds issued before the date of said consolidation and secured by mortgage on said lines.

"Fifth. Your receivers further state that the several branch and leased lines of said system were, to the best of their knowledge and belief, acquired at the dates, in the manner, and on the terms following, to wit:

(Here follows a statement in detail of the dates and terms on which the various branch lines were acquired by the Wabash Company, and as to the Clarinda & St. Louis line it contained the following:)

"Clarinda & St. Louis railroad.

On the 11th day of July, 1879, the Clarinda and St. Louis Railroad Company (of Missouri) conveyed to the St. Louis, Kansas City & Northern Railway Company its line of railroad extending from Roseberry, Missouri, to the Iowa State line, a distance of ten miles, and on the 15th day of July, 1879, the Clarinda & St. Louis Railroad Company (of Iowa) leased to the St. Louis, Kansas City & Northern Railway Company, for a term of ninety-one years, its line of railroad extending from the Iowa State line to Clarinda, Iowa, a distance of eleven and one-half miles. To construct and equip the foregoing lines (which together formed a continuous line from Roseberry, Missouri, to Clarinda, Iowa, a distance of twenty-one and one-half miles) the St. Louis, Kansas City and Northern Railway
166 Company issued its bonds in the sum of $264,000.00, and to secure the payment of the principal and interest thereof said company executed a mortgage covering all the lines aforesaid. Said bonds bear interest at the rate of six per cent. per annum, payable on the first days of February and August. For the period commencing May 29th and ending November 30th, 1884, the earnings and expenses of said line have, under the receivership, been as follows:

Gross earnings		$2,790 79
Operating expenses	$6,667 58	
Other debits (including six months' taxes)	737 47	
Proportion of car-trust interest	10 43	
Interest (six months)	7,920 00	
		15,335 48
Deficit		$12,544 69

The expenses of this line, not including interest, have exceeded its earnings $4,624.69. * * * Your receivers therefore pray your honors to make such orders with respect to the future operation of said lines and concerning the payment of the respective rentals agreed to be paid by said Wabash, St. Louis & Pacific Rail-

way Company in the said leases and agreements aforesaid as to your honors shall seem meet.

SOLON HUMPHREYS AND
THOMAS E. TUTT, *Receivers.*
WELLS H. BLODGETT, *Solicitor.*"

Notice that the foregoing petition had been filed in said cause, and that the same would be heard on April 14th, 1884, was by order of said court duly served upon the solicitors of intervenor.

On the 16th day of April, 1885, the following order was entered in said cause by said court:

CENTRAL TRUST COMPANY *et al.*, Complainants,
vs.
167 WABASH, ST. LOUIS & PACIFIC R'Y CO. *et al.*, Defendants. } 2357 & 2464, Consolidated.

In the matter of the application of the receivers for cancellation of certain leases.

Now, at this day, the report of Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis and Pacific Railway Company, filed herein on the 20th day of March, 1885, showing to this court, among other matters, the earnings and expenses of the leased and branch lines of the said Wabash, St. Louis and Pacific railway for the period commencing on the 29th day of May and ending on the 30th day of November, A. D. 1884, and praying for orders with respect to the future operation of said lines and concerning the payment of interest and the respective rentals agreed to be paid by said Wabash, St. Louis and Pacific Railway Company in the several leases and agreements in said report set forth, coming on to be heard, pursuant to the order of the court theretofore made on notice given, the court gave the following opinion thereon:

BREWER, *J.* (orally):

Several questions have been presented to us the last few days concerning which we have come to a conclusion, and perhaps we had better dispose of those before proceeding with the hearing of other matters.

I might preface what I have to say in reference to the legal questions involved with the remark that this court is in very much the condition of that successful but unfortunate holder of a lottery ticket to whom the first prize of an elephant was awarded. The prize was vast and valuable, but the ever-recurring conundrum was "What to do with it?" And this Wabash road comes to us with ever-recurring and difficult questions.

168 In reference to the Cairo Division, in which an order was presented to us day before yesterday, we have passed that order with this addition:

"And it is further ordered that the receivers appear to said cause pending in said circuit court for the southern district of Illinois and present any demand that they may have as said receivers

against said property known as the Cairo Division for operating or other expenses, and also for the proportion of the receivers' certificates issued under the orders of this court for which said property may be justly chargeable in law or in equity."

That is, we pass it with the idea that, while jurisdiction is retained in this court for ultimate orders, it is better that that court, in the first instance, pass on the amount of receivers' certificates or operating expenses justly chargeable to the Cairo Division, and include such amount in the foreclosure decree which shall be entered.

Mr. GREEN: I think a blank was left at the time when the surrender should be made. That might be filled up by inserting the words "ten days."

Mr. TAUSSIG: We prefer that should be a matter of consultation. There are two blanks—one in reference to the present surrender and the other in reference to the rolling stock.

169 * * * * * * *

BREWER, *J.* (orally):

Now, recurring to the general questions that are presented, we name some half-dozen matters which we think should be placed in the form of an order or orders, and let me preface them with a brief statement.

This Wabash road is composed of many subdivisions. While it is a single corporation to-day, yet into it have passed many
170 corporations and many separate railroad properties. In administering such a consolidated property the court must look at not merely the interest of the mortgagee in this general mortgage or of the mortgagor as a single entity or corporation, but also the separate and sometimes conflicting interests of the various subdivisions and their respective encumbrances, and back of all that the duty which every railroad corporation owes to the public. For underlying the rule which the Supreme Court has laid down in respect to the payment by receivers, when they take possession of railroad property, of prior unsecured debts, recently accrued, runs the thought as expressed by the Supreme Court that a railroad corporation owes a duty to the public which has given it its franchise and enabled it to construct its road, the duty of operating that road for the benefit of the public. While that may not be what you may call an absolute duty, enforcible under all circumstances, it is still a duty to be regarded and enforced by the courts when they take possession of railroads through their officers; and that duty is not limited to the operation of merely that particular fragment of a road which is pecuniarily profitable in its operations, but it extends to the road as an entirety and to all its branches, all its parts differing in that particular from the duty which would rest upon the court if it had simply taken possession of property used for private purposes, manufacturing or otherwise, where the single question might well be said to be one of pecuniary profit. This Wabash road as a system was in operation—a going concern—from one end to the other, as such discharging its duties as best it could to its various

creditors. This court, at the instance of the corporation and to preserve the integrity of this system, took possession of it by its receivers. It took possession of it as a going concern, and so far as is reasonable and practicable it should continue it as a going concern until it surrenders it to whoever may be the purchasers or future holders of it.

171 With that preface and calling these separate branches which have passed into this consolidated road subdivisions, since some have passed in by way of lease and others by way of consolidation, subject to separate mortgage, we pass orders substantially as follows:

The first is one which has already been entered and we simply emphasize by repeating it that subdivisional accounts must be kept separately. That was an order passed by Brother Treat at the very outset of this receivership, in order that the particular equities of each one of these divisions as between themselves might be ascertained.

2. Where any subdivision earns a surplus over expenses the rental or subdivisional interest will be paid to the extent of the surplus, and only to the extent of the surplus. Any past diversion of such surplus for general operating expenses will be made good at once and, if need be, by the issue of receivers' certificates. Thus, for illustration, this Toledo, Peoria and Western railroad appears by the report to have been earning a surplus over its operating expenses. That surplus is not the full rental price, and even that has not been paid to the lessor, having been used for general operating expenses. Any net earning should be paid over to the lessor, or, if there be a subdivisional mortgage, to the mortgagee, and any such diversion as that should be made good and made at once. At the inception of this receivership an order was passed authorizing the issue of two million dollars receivers' certificates for the payment of such amount of prior debts for labor and material. Those have been partially paid and without the issue of all of the certificates authorized, only a half a million having been issued. The receivers, hoping, doubtless, that the business of the road would continue to be such that they need not issue more

172 than half a million receiver's certificates, have diverted funds which should be applied to the payments of these rents to the payment, partially, of this past indebtedness. To that extent the diversion should be restored.

3. Where a subdivision earns no surplus, simply pays operating expenses, no rent or subdivisional interest will be paid. If the lessor or the subdivisional mortgagee desires possession or foreclosure he may proceed at once to assert his rights. While the court will continue to operate such subdivision until some application be made, yet the right of a lessor or mortgagee whose rent or interest is unpaid to insist upon possession or foreclosure will be promptly recognized.

That, it is true, may work a disruption of the system, as evidenced by the movement just made in respect to this Cairo Division, but the proceeding for disruption will come from the subdivisions. The

court is not sloughing off branches, tearing the system in two, but the disruption, if it comes, will come from those who seek separation and have legal right to so do.

4th. Where a subdivision not only earns no surplus, but fails to pay operating expenses, as in the St. Joseph and St. Louis Branch, the operation of the subdivision will be continued, but the extent of that operation will be reduced with an unsparing, though a discriminating, hand—that is, if a subdivision does not earn operating expenses and the receivers are running two trains a day, then lop one of them off. If they are running one train a day and still it does not pay, then run one train in two days. While the court will endeavor to keep that subdivision in operation it will be made the burden of it to the consolidated corporation and to all the other interests put into that consolidated corporation a minimum.

173 We have used the term "with an unsparing but a discriminating hand." By this we mean that certain things must be left to the discretion of the receivers. It may be that running one mixed train, proffering slight accommodation to the traveling public, would work a greater deficit than two trains, one furnishing the conveniences of a passenger train and the other purely a freight train. That must be left to the discretion of the receivers. The court is not in a position to determine as to what in any particular case will be most likely to work out a minimum deficit. If there is any controversy hereafter arising under the management of the receivers respecting any reduction, why all the parties interested can apply to the court.

Some of these branches across the river seem, upon the map at least, to be so situated in respect to connections that a limited number of trains would answer all the real demands of the public, and that they would be operated with a very slight expense. Suppose, as of course it may be expected, there will continue to be a deficiency in the operating expenses of such subdivisions, such deficiency will be paid out of the general earnings of the consolidated road, or, if need be, by the issue of receivers' certificates.

While we are, both of us, loth to go into the receivers' certificate business and do as little of it as is reasonably possible for a court having such large properties in its hands, yet in such a case we think the emergency arises. Suppose we take possession of a single short line (and we have in one or two other cases), the continuance of that as a going concern is emphasized more than once by the Supreme Court as a duty, as a reason for paying prior indebtedness, and also as a reason for issuing receivers' certificates. Stop operating it and it becomes a dead concern, its connections are broken up and its value is impaired. Therefore, to preserve that value,

174 the courts have said that it is right in a limited degree to issue receivers' certificates, and if that be true where the court has but a single line it is equally true where it has a road with various branches, and as to all of those branches. The value of any branch abandoned is diminished and the court may not consider simply the interests of the consolidated company, the mortgagor, and the trust company, the mortgagee. It is bound to regard the

interests of each one of these subdivisions that went into the consolidated company, and thus into the receivers' hands, and if the court may and ought to issue receivers' certificates in order to keep a single line a going concern, so, having possession of this system, with its various branches, for the same reason and by the same means, it should keep each one of them in operation.

There will be no modification of the order heretofore entered concerning receivers' certificates, but all equities respecting them, as between the various subdivisions, will be adjusted in the final decree. There may be, as counsel strenuously urged yesterday, a great many equities as between the various subdivisions in respect to the final burden of these receivers' certificates; but they have been authorized for only such claims as if no receivers' certificates had been issued and the road not taken possession of by the court could have been cast into liens prior to all mortgages upon the road and all its branches; any single labor or material claim could have been cast into a lien which would have been a first lien on the North Missouri road, a lien antecedent to all its mortgages, and there is no impropriety in substituting receivers' certificates for that kind of claim. It simply puts it on the same basis as the claim stood before the certificate was issued. When it comes to a sale of the road or other final disposition of the matter, it may be there will be such equities as will justify the casting of the burden of these
175 certificates upon one subdivision rather than another. If the road goes into a single sale as an entirety, the purchaser has got to take the burden of these receivers' certificates, and before the court passes the road out of its hands the receivers' certificates will be paid.

Application also is made for the reappointment of receivers, or, as stated in the language of the motion, for extending the receivership to the trust company, the mortgagee in the general mortgage. I confess that I do not wholly understand why such an order as that is asked, and I cannot appreciate what counsel mean when they say make the receivers receivers for the trust company, the mortgagee.

As we look upon it, the receivers are not receivers for either party. They are simply the hand of the court. In the process of the litigation the court has taken possession of the property and holds it, neither for the mortgagor nor the mortgagee, and it matters not, for the ultimate determination of the suit, at whose instance the receivers were appointed. They act for neither party. They represent neither party. They stand here simply as the hand of the court, holding the property for disposition at the end of the litigation, for the benefit of all.

So I cannot see what can be gained as a legal proposition by a new order of appointment extending the receivership, as counsel say, to the trust company, the mortgagee. The receivers will have no greater power, no different power, would owe no different duty, and would be no more and no less subject to the orders of this court than they are now, and certainly they would have no right in the

operation of their trust to extend favors to the one side or the other.

176 Furthermore, as receivers, appointed at the instance of the mortgagor in the first instance, they took possession of the entire properties, while this order as tendered contemplates a seizure of a part only of these properties, not all. Having taken possession of the road under the idea, in the first instance, that the integrity of the system had a value and should be preserved, it seems to us the receivership should continue right along in that line. There will be no reappointment of the receivers.

The motion of Mr. Hagerman, representing certain bondholders of the Toledo, Peoria and Western Railroad Company, must be overruled. We cannot turn the road over to the bondholders or force it upon trustees, if they do not come here and ask for it. Partially, of course, the motion accomplishes its purpose, in that the order will pass, as stated above, for paying over the surplus earnings as rent to the corporation.

I believe that minutes all the matters concerning which we have come to a conclusion. My Brother Treat may wish to emphasize some portions of it.

TREAT, *J.*: I think you have covered all the points.

And thereupon it is ordered that the foregoing opinion stand as the order of the court with respect to the matters therein referred to.

To the above ruling of the court Louis H. Meyer, trustee, by his solicitor, excepts.

177 On the 15th day of October, 1885, the Clarinda & St. Louis Railway Company and George I. Seney, trustee, filed in said cause their joint and separate answers to the original bill and amended bill of the Wabash, St. Louis & Pacific Railway Company and the cross-bill and original bill of the Central Trust Company of New York and James Cheney, as follows:

178 In the Circuit Court of the United States for the Eastern District of Missouri. September Term, 1885.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants, *vs.* THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants.	In Chancery. Consolidated Cause. Nos. 2357 and 2464.

The joint — separate answer of the Clarinda and St. Louis Railroad Company and George I. Seney, trustee, to the original bill and amended bill of the Wabash, St. Louis and Pacific Railway Company and the cross-bill and original bill of the Central Trust Company of New York and James Cheney.

These defendants, saving and reserving unto themselves any and all advantage of exception that can or may be taken to the many imperfections in the original bill and amended bill of the Wabash,

St. Louis and Pacific Railway Company and the cross-bill
179 and original bill of the Central Trust Company of New York and James Cheney, for their answer thereto or to so much thereof as they are advised it is material or necessary for them to answer, say—

That as to all matter and things alleged in said several bills, except as hereinafter expressly admitted, these defendants have no knowledge save from the allegations of the said several bills; that such knowledge does not furnish them with information sufficient to form a belief as to their truth, and they therefore require proof concerning the same.

These defendants admit that defendant, George I. Seney, was at the commencement of this suit and still is a citizen and resident of the State of New York. They admit that on the 11th day of July, 1879, the Clarinda and St. Louis Railroad Company was a corporation organized under the laws of the State of Missouri; that said corporation was then the owner of a projected and located line of railway commencing on the main line of the Omaha Division of the St. Louis, Kansas City and Northern railway at a point on the east side of the Nodaway river, in Nodaway county, Missouri, and extending thence in a northerly direction through said county to the boundary line between the States of Missouri and Iowa; but these defendants say, on information, that the distance from said point on said Nodaway river to said boundary line is ten and one-tenth miles and not one and five-tenths miles as alleged in said bills and cross-bills. These defendants admit that on said day said company sold and conveyed by deed to said St. Louis, Kansas City and Northern Railway Company all the said railroad as then constructed or thereafter to be constructed, together with all its franchises, choses in action, and property of every description, including all subsidies and subscriptions then made or thereafter to be made in aid of the construction of said road.

180 And these defendants, further answering, admit that on the 15th day of July, 1879, the defendant, The Clarinda and St. Louis Railroad Company, was a body corporate, organized under the laws of the State of Iowa; that on said day the said company executed a lease, and thereby leased and demised to the said St. Louis, Kansas City and Northern Railway Company for the period of ninety-one years a certain line of railroad then owned by the said lessor company, extending from the town of Clarinda, in said State of Iowa, in a southerly direction through the county of Page, in said State, as then constructed or thereafter to be constructed, to the boundary line between said States of Iowa and Missouri, said terminus being at a point where said line of railroad connects with a branch line of said lessee company at the boundary line aforesaid, together with all real estate, right of way, cars, and all franchises of said lessor company; but these defendants say, on information, that the distance between said points, being the extent of said line of railway in said State of Iowa as aforesaid, is eleven and four-tenths miles and not twenty miles, as in said bills and cross-bills alleged.

These defendants admit that by the terms of said lease the said

lessee company agreed for the purpose of raising funds to construct, complete, and equip said line of road, to issue its own bonds to the amount of $12,000 per mile for each mile thereof, said bonds to run forty years from August 1, 1879, with interest at the rate of six per cent. per annum, represented by coupons, payable on the first days of August and February of each year, and that to secure the payment of such principal and interest both said lessee company and said defendant, The Clarinda and St. Louis Railroad Company, agreed to execute their several mortgages upon all their right, title, and interest in and to its said branch line of railroad and appurtenances.

181 And these defendants, further answering, admit that on the first day of August, 1879, the said St. Louis, Kansas City and Northern Railway Company did, in pursuance of the terms of said lease, execute a series of bonds, amounting to the sum of $264,000, dated August 1, 1879, payable to defendant, George I. Seney, or bearer, 40 years after date, at the National Bank of Commerce, New York, with interest represented by coupons, payable semi-annually on the first days of August and February of each year; that in order to secure the payment of the principal and interest specified in said bonds, this defendant, The Clarinda and St. Louis Railroad Company, and the said St. Louis, Kansas City and Northern Railway Company did, on the 15th day of July, 1879, execute their several mortgages or deeds of trust to defendant, George I. Seney, as trustee, conveying thereby all their right, title, interest, and estate in and to all of said railroad, with all its rights, privileges, and franchises, together with all the real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, and cars, as the same was then or might thereafter be constructed, maintained, operated, or acquired, and all the appurtenances thereunto belonging, to the said defendant, George I. Seney, his successor, successors, or assigns, in trust, as in said several mortgages described, forever, free from all liens or encumbrances, save and except the said lease hereinbefore referred to.

These defendants, further answering, say that all of said bonds secured as aforesaid by the said mortgages are outstanding and unpaid and are owned or held by parties to these defendants unknown.

And these defendants say that a true copy of said deed, executed as aforesaid by this defendant, The Clarinda and St. Louis Rail-
182 road Company, to said St. Louis, Kansas City and Northern Railway Company, is contained in the volumes of exhibits filed herein at page 292 thereof, marked "Sub-Exhibit F No. 29;" that a true copy of said lease, executed as aforesaid by this defendant, The Clarinda and St. Louis Railroad Company, is contained in said volumes of exhibits at page 296 thereof, marked "Sub-Exhibit F No. 30;" that a true copy of said mortgage, executed as aforesaid by this defendant, The Clarinda and St. Louis Railroad Company, is contained in said volume of exhibits at page 305 thereof, marked "Sub-Exhibit F No. 31;" and that a true copy of said mortgage, executed as aforesaid by said St. Louis, Kansas City and Northern Railway Company, is herewith filed, marked "Exhibit A;" all

of which said exhibits these defendants pray may be considered a part of this answer as though here fully set forth.

These defendants admit the leasing to the said St. Louis, Kansas City and Northern railway of the lines of railroad by certain railroad corporations, to wit, the St. Joseph and St. Louis Railroad Company, the Boone County and Booneville Railway Company, the St. Louis, Council Bluffs and Omaha Railroad Company, the St. Louis, Ottumwa and Cedar Rapids Railway Company, the Brunswick and Chillicothe Railroad Company, and the Council Bluffs and St. Louis Railway Company, as alleged in said bills and cross-bills.

And these defendants, further answering, say that the earnings of said St. Louis, Kansas City and Northern railway, with its said leased lines of railroad, have been continuously since the execution of said mortgages as aforesaid and are now amply sufficient to pay all operating expenses of said lines, all legal liabilities and charges fairly and properly resting upon them and each of them, including
183 the interest accruing on said bonds, and that it has not been at any time since the execution of said mortgages necessary to contract any debt for the purpose of discharging any liability or to meet any expense properly incurred for or on account of said Clarinda Branch, or to pay the interest or principal of said indebtedness secured to this defendant, George I. Seney, as trustee, by said mortgages as aforesaid.

These defendants, further answering, say that the said mortgages are a first lien upon said property as therein described prior and superior to any and all other liens or claims of whatsoever description.

And these defendants, further answering, say that the said property held by said defendant, George I. Seney, as trustee as aforesaid, ought not in equity and good conscience to be held in any way liable for or chargeable with any portion of the costs, charges, or expenses incurred in this proceeding, and these defendants here particularly object to and protest against any receivers' certificates heretofore issued or which may be hereafter issued by order of this court being made chargeable against said mortgaged property or any portion thereof so as to affect in any degree the priority of said mortgages; and these defendants pray that by order of this honorable court said certificates may be held and decreed at the hearing of this cause to be in all respects inferior to and subject to the lien of said mortgages, as hereinbefore claimed.

And these defendants ask that this court will in all respects preserve, protect, and enforce the rights of the holders of bonds secured by the said mortgages so as aforesaid executed to this defendant, George I. Seney, as trustee; and these defendants, having fully answered herein, pray to be dismissed with their reasonable costs and charges in this behalf sustained.

WM. H. BLISS,
Solicitor for Answering Defendants.

On the 6th day of January, 1886, said consolidated cause came on for final hearing before said court, and the following decree of foreclosure and sale was entered, to wit:

184 In the Circuit Court of the United States for the Eastern District of Missouri. September Term, A. D. 1885. In Equity.

THE CENTRAL TRUST COMPANY OF NEW YORK and Others *against* THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY and Others. } Nos. 2357 and 2464. Consolidated Cause.

Decree of Foreclosure and Sale, January 6th, 1886.

Now on this day came the following parties, by their solicitors, namely:

The Central Trust Company of New York, James Cheney, The Wabash, St. Louis & Pacific Railway Company, The Mercantile Trust Company of New York, The St. Louis, Iron Mountain
185 & Southern Railway Company, Solon Humphreys, John T. Terry, and all the other defendants who have answered the bill of The Central Trust Company of New York and James Cheney, or the bill filed by the said complainants in the State court and removed to this court, or the cross-bill filed by the Mercantile Trust Company of New York, viz:

1. Anthony J. Thomas, } As trustees of the Cairo Division.
2. Charles Edward Tracy, }
3. United States Trust Company of New York.
4. Quincy, Missouri & Pacific Railroad Co.
5. Charles H. Bull.
6. Amos Green.
7. Henry F. Spaulding.
8. St. Joseph & St. Louis Railroad Co.
9. St. Louis Bridge Co.
10. The Tunnel Railroad of St. Louis.
11. St. Louis, Council Bluffs & Omaha Railroad Co.
12. James B. Eads.
13. Joseph A. Jamison.
14. Charles Parsons.
15. Isaac H. Knox.
16. Geo. E. Leighton.
17. Louis H. Meyer.
18. Michigan City & Indianapolis Railroad Co.
19. William Nichols.
20. Geo. S. Coe.
21. Indianapolis, Peru & Chicago Railway Co.
22. German Savings Institution.
23. Boone County and Booneville Railway Co.
24. Brunswick & Chillicothe Railway Co.

186 25. Geo. M. Rice.
26. Edward P. Burnham.
27. John Kimball.
28. Chicago, Cincinnati & Louisville Railroad Co.

29. Clarinda & St. Louis Railroad Co.
30. Geo. I. Seney.
31. Geo. T. M. Davis.
32. Des Moines Northwestern Railway Co.
33. Farmers' Loan and Trust Co.
34. Henry W. Ford.
35. Richard S. Brock.
36. J. P. Giraud Foster.
37. Edward K. Goodnow.
38. John M. Woodson.
39. Robert A. Betts.
40. Alexander M. White.
41. Henry H. Worden.
42. James R. Jesup.
43. John N. A. Griswold.

And it appearing to the court that all the defendants to the bills of complaint aforesaid have entered their appearance herein or have been duly served with process herein or have been notified of the pendency of this cause by personal service or by publication as heretofore ordered by the court, such service of process or notice being given and such publication having been made more than twenty days before the first Monday of October, A. D. 1885;

It also appearing to the court that the following trustees have either resigned their trusts or departed this life, namely:

1. Edwin D. Morgan.
2. H. F. Vail.
187 3. O. H. Browning.
4. Abram W. Hendricks.
5. Lucien Tilton.

The court finds that the trusts represented by the parties above named as having resigned their trusts or departed this life are fully represented in this cause or that such trusts will not be affected by this decree.

The court also finds that of the parties defendant served with process or notified, as aforesaid, a large number have been defaulted more than a month before the rendition of this decree, and the original and removed bills of the Central Trust Company and James Cheney taken for confessed against them and each of them, viz:

1. John R. Lionberger.
2. Attica, Covington and Southern R. R. Co.
3. Champaign and Southeastern R'y Co.
4. Havana, Rantoul and Eastern R. R. Co.
5. Des Moines and St. Louis R. R. Co.
6. Council Bluffs and St. Louis R'y Co.
7. Humeston and Shenandoah R. R. Co.
8. St. Louis, Ottumwa and Cedar Rapids R. R. Co.
9. Alfred T. White.
10. Daniel A. Lindley.
11. Wager Swayne.
12. Clifford A. Hand.
13. Robert C. Martin.

14. George J. Gould.
15. John Paton.
16. David J. Tyson.
17. Charles E. Whitehead.
18. William Hill.
188 19. Theodore Gilman.
20. Edward De Rose.
21. Henry A. Mott.
25. Charles Jackson.
23. G. M. Whittemore.
24. James H. Britton.
25. Townsend Underhill.
26. William H. Ladd.
27. J. C. Rogers.
28. Benjamin Ham.
29. Archibald Hopkins.
30. James Compton.
31. Abram W. Hendricks.
32. Thomas B. Coulter.
33. Thomas Mayo.
34. Philip Henry Brown.
35. Metropolitan National Bank.
36. Eel River R. R. Co.
37. Toledo, Peoria & Western R. R. Co.
38. St. Louis, Jerseyville & Springfield R. R. Co.
39. Peoria & Pekin Union R. R. Co.
40. Chicago & Western Indiana R. R. Co.
41. Chicago, St. Louis & Pittsburg R. R. Co.
42. Hannibal Bridge Co.
43. Missouri, Iowa & Nebraska R. R. Co.

The court finds and adjudges that because the bills so filed by the Central Trust Company and James Cheney and the cross-bill filed by the Mercantile Trust Company of New York cover and embrace all the rights and equities upon which the property hereinafter described can or ought to be sold by decree or decrees
189 of this court in this cause it will not be necessary to found this decree on the original or amended bills of the Wabash, St. Louis & Pacific Railway Company or the prayers thereof; but said last-named bills will be retained by the court for the purpose of adjusting all such rights as have arisen under the same, but not for the purpose of foreclosing under the prayers thereof any of the instruments hereinafter described.

And now this cause coming on for final hearing on the original removed bill and cross-bills of the Central Trust Company of New York (to be called hereafter the Central Trust Company for the sake of brevity) and James Cheney, the cross-bill of the Mercantile Trust Company, the answer of the Wabash, St. Louis & Pacific Railway Company (to be called hereinafter the Wabash Company for the sake of brevity), and all other answers to the above bills of parties appearing of record, with all replications, exhibits, reports of masters or commissioners to whom any of the questions or issues herein pre-

sented were referred, and also all evidence taken in said cause relating to said questions and issues and all replications of the parties or any of them, and also upon the default of all parties who have suffered default as aforesaid;

And the court, having heard the arguments of counsel and being fully advised in the premises, finds and adjudges—

On the first day of June, A. D. 1880, the Wabash Company was a body corporate formed by the consolidation of certain other corporations organized under the laws of the States of Ohio, Indiana, Illinois, and Missouri, and that said company then owned cer-
190 tain lines of railroad formerly owned by other bodies or parties, with all the property, real and personal, and all the franchises thereof; that said Wabash Company was then acquiring or in contemplation of acquiring still other lines of railroad, with the property and franchises thereof, by lease, consolidation, or otherwise; all of which lines so owned or held or so about to be acquired will be more fully described hereinafter.

On the first day of June, A. D. 1880, the said Wabash Company, for the purpose of securing an intended issue of its mortgage bonds to the amount of fifty millions of dollars (to be known as "general mortgage bonds") and the payment of the principal and interest thereof, duly executed and delivered to the Central Trust Company of New York and James Cheney, of Indiana, as trustees, its mortgage or deed of trust (known as "the general mortgage"), and thereby conveyed to said trustees, for the purposes in said general mortgage fully set forth, certain lines of railroad and certain interests, as the same then existed or might thereafter exist, in and to certain other lines of railroad, with all the property and franchises, rights, income, and choses in action pertaining thereto. The lines of railroad and property and interests specifically described and defined in said mortgage (such description being hereby adopted) and the extent of the lien thereby created as against certain other liens are set forth in said mortgage as follows, such enumeration, however, not embracing other lines of railroad afterwards acquired by the Wabash Company and to which the lien of said general mortgage afterwards attached:

191 "All of the right of way and railroad of the said first party extending from the city of Toledo, in the State of Ohio, through the State of Indiana, and thence into the State of Illinois, to Meredosia, with branch of said road to Naples and East Hannibal, and from Meredosia to Camp Point, in the State of Illinois, and with branch of said road from Clayton to the east bank of the Mississippi river, at Hamilton, in said State, and with branch of said road leading from Decatur, in said State, to East St. Louis, in the same State; and also the railway of the party of the first part extending from St. Louis, in the State of Missouri, in a northwesterly direction, to Kansas City, Missouri, with a lateral extension from Moberly, in the county of Randolph, to Ottumwa, in the State of Iowa, and a branch from Salisbury, in the county of Chariton, State of Missouri, to Glasgow, in the county of Howard, in said State and also an extension from Brunswick, in said county of Chariton

in a northwesterly direction, to the city of Council Bluffs, in the State of Iowa, which lines of railroad will, when united, form one continuous line of railway, in the same general direction, from the waters of Lake Erie, at Toledo, Ohio, to the cities of Council Bluffs and Kansas City, on the Missouri river, as aforesaid, together with all the embankments, bridges, turn-outs, side tracks, buildings, and structures, water-tanks and fixtures, shops, engine and other houses, depots, turn-tables, engines, cars, machinery, tools, ferry and other boats, and every other thing appurtenant to said railroad or
192 used in connection therewith belonging to the said first party, together with all rents, issues and profits, credits and choses in action, accruing to said first party from said railroad and appurtenances as owner and holder thereof.

"And the said Wabash, St. Louis and Pacific Railway Company, in consideration of the premises above recited and for the further security of the bonds above described, does hereby grant, bargain, sell, assign, transfer, and convey unto the Central Trust Company of New York and James Cheney, trustees, their heirs and successors in said trust, all the right, title, and interest of said first party, as the same now exists or may hereafter exist, by virtue of any contract, lease, purchase, or consolidation, in and to the following-described railroads now in process of amalgamation with the railroad of the said first party, including with said railroads every appurtenance thereto or thing used in connection therewith, and all rents, issues, and profits arising therefrom to the said first party; all the above as fully as above described with reference to the railroad now owned and held by said first party and as fully as it is or may be possible for said first party to convey the same:

"The Boone County and Booneville railway, extending from Centralia to Columbia, in the State of Missouri.

"The St. Louis, Ottumwa and Cedar Rapids railway, extending from Moberly, in the State of Missouri, to Ottumwa, in the State of Iowa.

193 "The St. Joseph and St. Louis railway, extending from New Lexington and Richmond and Lexington Junction to St. Joseph, in the State of Missouri.

"The Brunswick and Chillicothe railway, extending from Brunswick to Chillicothe, in the State of Missouri.

"The St. Louis, Council Bluffs and Omaha railway, extending from Chillicothe to Elm Flats, in the State of Missouri.

"The Chicago and Paducah railway, extending from Effingham and Altamont to Streator, in the State of Illinois.

"The Chicago and Strawn railway, extending from Strawn to Chicago, in the State of Illinois.

"The Eel River railway, extending from Logansport to Butler, in the State of Indiana.

"The Quincy, Missouri and Pacific railway, extending from West Quincy, in the State of Missouri, to the Missouri river, opposite Brownsville, Nebraska.

"The Missouri, Iowa and Nebraska railway, extending from Keokuk, Iowa, to a junction with the Omaha Division of the Wabash,

St. Louis and Pacific railway, near the line between the State of Iowa and the State of Missouri.

"The Champaign, Havana and Western railway, extending from Champaign to Havana, in the State of Illinois, and from White Heath to Decatur, in the State of Illinois.

"The Toledo, Peoria and Western railway, extending from Warsaw, in the State of Illinois, to the State line of Indiana, and
194 from La Harpe, in the State of Illinois, to Burlington, in the State of Iowa.

"The Detroit, Butler and St. Louis railway, from Butler, in the State of Indiana, to Detroit, in the State of Michigan; to have and to hold the said property, real and personal, including the said railroads, appurtenances, equipment, franchises, rights, credits, and choses in action, and every interest herein granted, that the said trustees, as joint tenants and not as tenants in common, and the survivor of them, his heirs and successors, —; but in trust, nevertheless, for the use and purposes herein declared, and for the purpose of protecting and securing the holders of said fifty thousand bonds, and each and every of them, and upon the conditions following—that is to say:

"The estate hereby conveyed and the lien of the trust hereby created shall be expressly subject and inferior to all such prior liens above referred to as are charged upon the several portions of the railroad and equipment of the railroad now of said first party, and to the estate and lien of such specific trusts and mortgages or other obligations as may be hereafter made and charged by the said first party upon specific property which said first party hereafter may acquire, and shall form part of the purchase-money or condition of the acquisition of the property so charged by said first party."

The court further finds and adjudges that, in addition to the lines of railroad specifically described in said general mortgage,
195 the lien thereof also attached to all the right and title of the Wabash Company in and to all the following railroads, property, franchises, rights, and interests, whether acquired before or after the execution of the said general mortgage and whether acquired by purchase, lease, or consolidation or contract, viz:

The Clarinda and St. Louis railway, being 10.1 miles long in the State of Missouri and 11.7 miles in the State of Iowa, making a railroad 21¾ miles in length, extending from Clarinda, Iowa, to Roseberry, Missouri. Said Wabash Company acquired title in fee to the Missouri portion of said railroad and a leasehold title to the remainder.

The Peoria, Pekin and Jacksonville railroad, extending from Pekin, Illinois, to Jacksonville, Illinois, a distance of 72.2 miles, said railroad having been acquired by purchase July 25, 1881.

The Springfield and Northwestern railroad, extending from Springfield, Illinois, to Havana, Illinois, a distance of 44.1 miles, said railroad being acquired by purchase July 30, 1881.

The Centreville, Moravia and Albia railroad, extending from Centreville, Iowa, to Albia, Iowa, a distance of about 25 miles. Said railroad was leased to the Missouri, Iowa and Nebraska Railroad

Company, and came to the Wabash Company with the property of said last-named company.

The Des Moines and St. Louis railroad, extending from Des Moines, in the State of Iowa, to Albia, in said State, through the counties of Polk, Marion, and Monroe, in said State, a distance of 67.3
196 miles, leased to the Wabash Company on the first day of March, 1882.

The St. Louis, Jerseyville and Springfield railroad, extending from Grafton, Illinois, to a point near Bates, Illinois, a distance of 71.4 miles. Said railroad was acquired by lease August 6, 1881.

The Attica, Covington and Southern railroad, extending from Attica, Indiana, to Covington, Indiana, a distance of 14½ miles, leased to said Wabash Company July 18, 1881.

The Michigan City and Indianapolis railroad, extending from Michigan City to La Porte, Indiana, a distance of 12.75 miles, leased to the Wabash Company June 1st, 1881.

The Indianapolis, Peru and Chicago railroad, extending from Indianapolis, Indiana, to Peru, Indiana, a distance of 75 miles, leased to said Wabash Company June 1st, 1881.

The Braidwood Branch, being a line ten and nine-tenth miles long, extending from near Braidwood, Illinois, to the Chicago Branch of the Wabash railroad. Said branch is partially constructed and was built by moneys arising from the sale of general mortgage bonds aforesaid.

The Champaign and Southeastern railroad, extending from Champaign, Illinois, to Sidney, Illinois, a distance of 11.6 miles, which was leased by the Wabash Company March 1st, 1882.

The Madison County railroad, extending from Edwardsville, Illinois, to its junction with the Chicago and Alton railroad, a distance of 8.5 miles, acquired by the Wabash Company by purchase.
197 The Humeston and Shenandoah railroad, extending from Humeston to Shenandoah, Iowa, a distance of 113 miles, in which the Wabash Company owns a one-half interest.

Certain real estate and terminal privileges in Burlington, Iowa, more particularly described in mortgage hereinafter referred to.

The bridge over the Mississippi river at St. Louis, with the tunnel and terminal rights in said city, leased by said Wabash Company and the Missouri Pacific Railway Company, as set forth in a certain lease hereinafter referred to.

The bridge over the Mississippi river at Hannibal, Missouri, leased by the two last-named companies, as set forth in a lease hereinafter referred to.

Certain right of use of the bridge over the Missouri river at Kansas City, Missouri, held under a lease or contract with Hannibal and St. Joseph Railroad Company, hereafter referred to.

The right to use certain tracks and terminal facilities in Cook county, Illinois, and in Chicago, Illinois, under lease or contract with the Chicago and Western Indiana Railroad Company, hereinafter referred to.

The right to use certain tracks and terminal facilities owned by the Peoria and Pekin Union Railway Company in Illinois under

contract with said last-named company, dated February 1st, 1881, hereafter referred to.

The right to use certain tracks and depot facilities in the
198 Union depot in Kansas City, Missouri, under contract with the Kansas City Depot Company, dated June 1st, 1876, hereinafter referred to.

The right to use certain tracks and depot facilities in the Union depot in Hannibal, Missouri, under contract with Hannibal Depot Company, dated June 30, 1881, hereinafter referred to.

The right to use certain tracks and depot facilities in the Union depot in St. Joseph, Missouri, under contract with St. Joseph Union Depot Company, dated September 2, 1880.

The right to use certain tracks and depot facilities in the Union depot at Detroit, Michigan, under contract October 20, 1881, hereinafter referred to.

The right to use certain tracks extending from Clayton, Illinois, to Quincy, Illinois, and certain depot and station facilities in said last-named city, said right arising under a contract or lease, dated January 1st, 1878, between the Chicago, Burlington and Quincy Railway Company and said Wabash Company.

An interest in the Elevator Company at Council Bluffs, Iowa, upon which a payment to the amount of $41,666.66 has been made by the Wabash Railway Company, for which no certificate has been issued.

Three hundred coal cars acquired from the National Rolling Stock Company November 23d, 1883, under an agreement to pay mileage on the same, with privilege of purchase at end of any one year, etc.

The following tracts or parcels of land, the title to which
199 was taken in the name of James F. How, as trustee, before the appointment of receivers in this cause:

Marion county, Iowa:

Lot 6, subdiv. of S. 7, T. 77, R. 21.

In the city of Chicago, State of Illinois:

In the assessors' div. of N. W. ¼ of W. ½ N. E. ¼ sec. 32, T. 39 N., R. 14 east, block 13.

In Brown's Addition in the N. E. ¼ sec. 32, T. 39 N., R. 14 E.; lot 8, in block 3; lots 8, 9, 43, 44, in block 4.

Gallaher's subdiv. of the S. ½ of block 9, in canal trustees' subdiv. of sec. 33, T. 39 N., R. 14 east.

Lots 19, 20, and 28, in block 2; lots 24, 34, 31, and 32, in block 1.

T. J. Foster's subdiv. of the part of block 10, canal trustees' subdiv. sec. 33, T. 39 N., R. 14 east.

Lots 1 and 37, in bl'k 1, and lots 1 and 37, in bl'k 2.

Guno's subdiv. of part block 10, canal trustees' subdiv. sec. 33, T. 39 N., R. 14 east; lot 47.

Canal trustees' subdiv. of sec. 33, T. 39 N., R. 14 E.; S. W. part 364.6 and 480 ft. of block 12.

Sutton's subdiv. of bl'k 28, of canal trustees' subdiv. S. 33, T. 39 N., R. 14 E.

Lots 5, 44, and 45, in block 2.

In assessor's div. of bl'k 11, of canal trustees' subdiv. sec. 33, T. 39 N., R. 14 E.

Lots 61 and 62, in block 11.

In the city of St. Joseph, State of Missouri:

In South St. Joseph Addition to said city.

Lots 1, 2, 3, 4, 5, 6, and 7, in block 56; lots 1, 2, 3, 4, 5, 6, and 7, in block 57; lots 5, 6, and 7, in block 58; lots 12, 13, and 14, in block 55.

200 In the city of St. Louis, State of Missouri:

In Scott's Addition to said city.

Lots 25, 26, 1, 2, 36, 33, and four feet and eight inches of lot 32 of block 6.

The court also finds and adjudges that the Wabash Company acquired title to the following lines of railroad, with all the franchises and property, real and personal, and all choses in action, rights, incomes, revenues, and credits pertaining thereto or used in connection therewith by the use of the general mortgage bonds aforesaid, and that said lines, rights, property, and interests were purchased by said company with said general mortgage bonds, viz:

The Peoria, Pekin and Jacksonville railroad, hereinbefore described.

The Springfield and Northwestern railroad, hereinbefore described.

The Braidwood Branch, hereinbefore described.

It is adjudged that as to all property, rights, interest, and choses in action acquired by the Wabash Company after the execution of said general mortgage, whether described in the same or not (except such as are herein otherwise adjudged and such as pertain to railroads not herein declared to be subject to the general mortgage), the lien of said mortgage attached and is now in force.

It is, however, adjudged that the said general mortgage on the property of the Wabash Company did not attach to or become
201 a lien on the railroad or property of the Havana, Rantoul and Eastern Railroad Company.

The court finds that said mortgage was duly recorded as required by law, and for all the contents and provisions thereof and for the terms and provisions of the bonds secured thereby and the coupons attached thereto reference is hereby made to a true copy of said mortgage, filed by said Wabash Company with its original and amended bills in this cause, marked Exhibit "B," and commencing on page 1 of volume 1 of the printed volume of exhibits.

The court further finds and adjudges that afterwards, on the first day of May, A. D. 1883, for the purpose of securing an intended issue of its bonds (called collateral trust bonds), amounting to ten millions of dollars, said Wabash Company executed and delivered to the Mercantile Trust Company of New York, as trustee, a certain other indenture called and known as "the collateral trust," and thereby assigned and transferred to said last-named company for the purposes of said trust all the bonds, stocks, cars, steamboats, rolling stock, and interest in real estate specified in said instrument, and then and there delivered all said bonds, stocks, and evidences of title to said trustee.

And for the terms and conditions of said collateral trust and of the bonds and coupons intended to be secured thereby reference is hereby made to a true copy thereof, filed by said Wabash Company with its original and amended bills herein, marked Exhibit "D," appearing in said printed volume 1 of exhibits, beginning on page 33.

202 The court finds and adjudges that at the time of the execution of the collateral trust the said Wabash Company transferred and delivered to the Mercantile Trust Company, trustee under said instrument, certain stocks, bonds, assignments, bills of sale, and other evidences of title to property, real and personal, pledged in and by said collateral trust, and that said stocks, bonds, assignments, bills of sale, and other evidences of title were as follows, this decree adopting the description given in said instrument and the preamble by which said description is introduced therein:

"Whereas the Wabash, St. Louis and Pacific Railway Company has deposited with the Mercantile Trust Company of New York assignments, bills of sale, or other evidences of title to the following-described bonds, shares, real estate, and other property, viz:

"$46,000 Union Bridge Company bonds;

"$1,342,000 Humeston and Shenandoah Railroad Company first-mortgage 7 per cent. bonds;

"$1,000,000 Wabash, St. Louis and Pacific Railway Company general mortgage six per cent. bonds;

"$400,000 Wabash Railway Company mortgage seven per cent. bonds of 1879;

"$199,000 Wabash, St. Louis and Pacific Railway Company, Detroit Division, six per cent. bonds;

"$248,000 Quincy, Missouri and Pacific Railroad Company income bonds;

"$1,711,000 Toledo, Peoria and Western Railroad Company first preferred income bonds;

"$728,000 Toledo, Peoria and Western Railroad Company second preferred income bonds;

203 "13,404 shares Toledo, Peoria and Western Railroad Company;

"10 shares St. Joseph Union Depot;

"210 shares Union Depot Company of Kansas City, Missouri;

"10 shares Hannibal Union Depot Company;

"5,187 shares Des Moines Northwestern Railway Company;

"2,214 shares Havana, Rantoul and Eastern Railroad Company;

"9,996 shares Des Moines and St. Louis Railroad Company;

"20,127 shares Humeston and Shenandoah Railroad Company;

"21,534.96 shares Missouri, Iowa and Nebraska Railway Company;

"9,000 shares St. Louis, Jerseyville and Springfield Railroad Company;

"2,030 shares Clarinda and St. Louis Railroad Company;

"14,246 shares Quincy, Missouri and Pacific Railroad Company;

"5,380 shares St. Louis, Ottumwa and Cedar Rapids Railway Company;

"11,089 shares Council Bluffs and St. Louis Railway Company;
"7,281 shares St. Louis, Council Bluffs and Omaha Railroad Company;
"4,332 shares Brunswick and Chillicothe Railroad Company;
"2,687 shares Centreville, Moravia and Albia Railroad Company;
204 "750 shares Attica, Covington and Southern Railway Company;
"1,665 shares American Refrigerator Transit Company of Illinois;
"60 shares Union Bridge Company of Toledo, Ohio;
"17 shares St. Louis County Railroad Company;
"4,994 shares Peoria and Pekin Union Railway Company;
"9,999 shares Chicago and Western Indiana Railroad Company;
"12,500 shares St. Louis Bridge Company common stock;
"1,160 shares St. Louis and Mississippi Valley Transportation Company;
"Steamers now on Lake Erie, known as the 'Russell Sage,' 'John C. Gault,' 'A. L. Hopkins,' and 'Morley;'
"15 locomotives manufactured by the Rhode Island Locomotive Works;
"13 passenger cars manufactured by Barney, Smith & Co.;
"5 baggage cars manufactured by Barney, Smith & Co.;
"1,210 freight cars manufactured by Barney, Smith & Co.;
"All the right, title, and interest of said party of the first part in and to certain rolling stock, being all the rolling stock mentioned and described in certain agreements between the party of the first part and the New York and Pacific Car Trust Association."
205 But the court finds that of the stock of the Des Moines Northwestern Railway Company the said Mercantile Trust Company now holds only 5,037 shares subject to said mortgage.

The said collateral trust also embraced and attached to certain real estate therein referred to, situate in the county of Cook and State of Illinois, held in trust for said Wabash Company by Solon Humphreys, and which the court finds was conveyed to said Solon Humphreys alone in trust for said Wabash Company. Said real estate is more particularly described as follows:

The whole of lots 1 and 2, in block 9.
The whole of lots 3 and 4, in block 9.
The whole of lots 5 and 6, in block 9.

All in Springer and Fox Addition to the city of Chicago, in Cook county, State of Illinois.

Also assessors' division of the N. W. ¼ and W. ½ N. E. ¼, section 32, town. 39 N., range 14 east, all lying east of the South Branch of the Chicago river, of latitude 32, and all being in the county of Cook aforesaid.

It is further found and adjudged by the court that of the general-mortgage bonds intended to be issued as aforesaid there were in fact issued and are now outstanding and unpaid a number thereof, the principal of which amounts to seventeen million dollars, and that there is due for interest thereon and upon coupons attached

thereto since the latter matured the further sum of two millions one hundred and thirty-two thousand seven hundred and fifty-three dollars and forty cents up to December 1, 1885, of which
206 number sixteen millions of dollars were sold for value, and the remaining one million were hypothecated to the Mercantile Trust Company of New York, as trustee in the collateral trust mortgage, and now held subject to said trust; and reference is hereby made to the report of the special master to whom was referred the matter of taking proof as to the number and amount of said bonds now outstanding, the amount of principal and interest due thereon, and the names of the parties owning and holding the same, as far as now known.

The court further finds that the Wabash Company, on the first day of June, A. D. 1884, made default in the payment of all the interest which became due on said bonds on said day, and that such default has continued ever since that time; that said company also made default in the payment of all installments of interest maturing on said bonds since said first day of June, A. D. 1884, and that all such defaults have continued ever since.

The court finds further that demand was duly made by the holders of a large number of said bonds and coupons at the office of said Wabash Company, in the city of New York, for the payment of the interest maturing thereon on the first day of June, A. D. 1884, such demand being made on and after said day, and payment was then and there refused.

That in the month of December, 1885, after the said default had continued for more than six months after the maturity of said coupons on the first day of June, 1884, and the demand made for the payment thereof as aforesaid, the holders of more than a ma-
207 jority in value of all the general mortgage bonds then outstanding and secured by said general mortgage determined that they required the principal of all said bonds then outstanding to become at once due and payable, and so notified the trustees named in said mortgage, and also gave notice in writing to said trustees of their having so determined, and thereby required said trustees to exercise the powers conferred on them by said mortgage to enforce the payment of the indebtedness and to proceed to foreclose the said mortgage by judicial decree.

It is therefore adjudged and decreed by the court that the principal sums specified in the general mortgage bonds aforesaid, as well as the interest thereon, have now become due and payable according to the terms and conditions of said instrument.

The court, being fully advised, also finds and adjudges that of the collateral trust bonds aforesaid there were issued and either sold for value or so pledged as to entitle the parties holding the same to the proceeds thereof and the security created therefor as aforesaid the whole amount of ten million of dollars of principal; that there is due thereon to Dec. 1, 1885, the additional sum of $1,109,268.80 as interest on said bonds and on coupons attached thereto since the maturing of such coupons.

That the Wabash Company made default in the payment of in-

terest maturing on said collateral trust bonds on the first day of May, A. D. 1884, and on each installment of interest maturing since that time; that demand was duly made for the payment of
208 interest maturing as aforesaid on the first day of May, A. D. 1884, at the office of the Wabash Company, in the city of New York, by the holders of a large number of said bonds and coupons, such demand being made on and after said first day of May, 1884; that after said default had been so made and after the demand aforesaid the holders of more than twenty-five per cent. of all said collateral bonds then outstanding, in writing, requested the Mercantile Trust Company aforesaid to proceed under the power contained in said indenture to sell all or a sufficient amount of the securities in said collateral trust mentioned to produce a sum sufficient to pay all the principal and interest of said entire issue of said bonds; that due notice of such request and of the purpose of said trustee to comply therewith was given to the Wabash Railway Company more than sixty days before said Mercantile Trust Company filed its cross-bill herein; but that all said property embraced in said collateral trust being under the control of this court, said trustee did not exercise its power of sale, but filed its cross-bill for the foreclosure of said instrument as a mortgage. The court therefore adjudges and decrees that the holders of said collateral trust bonds are now entitled to have the property embraced in said collateral trust sold and the proceeds applied to the payment of both the principal and interest of said bonds.

And for the number of said collateral trust bonds now outstanding and the names of the persons owning or holding the same reference is hereby made to the report of the master to whom said matter was referred by order of court.

209 The court further adjudges that upon the execution and recording of the general mortgage aforesaid the same became and was and still is a lien on the lines of railroad, franchises, interests, and property described in said mortgage as having been conveyed to said trustees at the time of the execution thereof, and that the said mortgage also became a lien on all the right, title, and interest of the Wabash Company in and to all such other lines of railroad, with all their property, rights, and franchises as are described in said mortgage as being then in course of amalgamation with the property of said Wabash Company. The said last-mentioned lien attached to each of said lines of railroad, with the franchises and property thereof, to the extent of the interest and title of the Wabash Company therein, whether acquired at the time of the execution of the said mortgage or after that time.

The court also adjudges as aforesaid that the Wabash Company, before or after the execution of said general mortgage, by lease, consolidation, purchase, or contract, acquired title to or interests in certain other lines of railroad, franchises, or property not specifically described in said general mortgage, but hereinbefore referred to; that the lien of said general mortgage under the terms and provisions thereof attached to all of said railroads, francnises, property rights, choses in action, and interests to the extent of the title and

interest of the Wabash Company therein; but the court adjudges that the lien so created on any line of railroad, franchises, interests, or property acquired by the Wabash Company after the execution of said general mortgage was and is subject to any lien, prior
210 or subsequent thereto, created to secure the purchase-money of said railroad, franchise, property, or interest, or to secure the performance of any condition on which said Wabash Company acquired the same.

It is further adjudged that at the time of the execution of said collateral trust and the delivery of the stocks, bonds, assignments, bills of sale, and other evidence of title to the property embraced therein by the Wabash Company to the Mercantile Trust Company, as trustee, said instrument became a lien on all the right, title, and interest of said Wabash Company in and to all the property, rights, and interests embraced in said collateral trust in favor of all owners and holders of said bonds, and that said lien is still in force.

It is further ordered and adjudged that this decree or any sale made thereunder shall not in any way prejudice or affect the rights of parties to or persons interested in certain mortgages, deeds of trust, leases, and contracts hereinafter set forth, but all the rights of such persons and parties are hereby reserved to them. The deeds of trust, mortgages, leases, and contracts in regard to which such reservation is made are as follows:

A mortgage or deed of trust to secure the principal and interest of bonds amounting to $900,000, with interest thereon at the rate of 7 per cent. per annum, executed by the Toledo and Illinois Railroad Company to the Farmers' Loan and Trust Company as trustee. Said mortgage became a lien on that portion of said railroad extending from Toledo, Ohio, to the Indiana State line, a distance of 75.5 miles. The said interest was paid up to August 1st, 1884, except that
211 represented by certain coupons funded under an agreement made in 1877.

A mortgage, dated August 1st, 1853, executed by the Lake Erie, Wabash and St. Louis Railroad Company to the Farmers' Loan and Trust Company, as trustee, to secure bonds amounting to $2,500,000, with interest at the rate of 7 per cent. per annum. Said mortgage became a lien on that portion of the railroad of the Wabash, St. Louis and Pacific Railway Company extending from the western boundary of the State of Ohio at the western terminus of the Toledo and Illinois railroad to the eastern boundary of Illinois, a distance of 166.1 miles.

A deed of trust, dated October 15, 1858, executed by the Toledo and Wabash Railroad Company to Edwin D. Morgan, as trustee, to secure bonds amounting to $1,000,000, with interest thereon at the rate of 7 per cent. per annum. Said deed of trust became a lien on that portion of said railroad extending from Toledo, Ohio, to the eastern boundary of the State of Indiana, all lying within the State of Ohio.

A deed of trust, dated October 15, 1858, executed by the Wabash and Western Railway Company to Edwin D. Morgan, as trustee, to secure the payment of bonds amounting to $1,500,000, with interest

thereon at 7 per cent. per annum. Said deed of trust became a lien on all the said line of railroad in the State of Indiana extend-
212 ing from the west line of the State of Ohio to the east line of the State of Illinois, a distance of 166.1 miles.

A deed of trust, dated May 25, A. D. 1863, executed by the Great Western Railroad Company of 1859 to George Griswold, Alexander M. White, and Henry Worden, as trustees, to secure bonds amounting to $2,496,000, with interest thereon at the rate of 7 per cent. per annum. That said mortgage became a lien on all said lines of railroad extending from Meredosia and Naples, in the State of Illinois, to the eastern boundary of Illinois, being 180.7 miles in length.

A deed of trust, dated May 11, A. D. 1865, executed by the Great Western Railway Company of 1859 to Solon Humphreys and James R. Jessup, to secure bonds amounting to $2,500,000, with interest thereon at the rate of seven per cent. per annum; which said deed of trust became a lien on all that portion of railroad last above described.

A deed of trust, dated March 1st, 1862, executed by the Illinois and Southern Iowa Railroad Company to John N. A. Griswold, James R. Jessup, and Lucien Tilton, as trustees, which became a lien on all that portion of the railroad aforesaid extending from Carthage, Illinois, to Clayton, Illinois, a distance of 29.1 miles; said mortgage being executed to secure bonds amounting to
213 $300,000, with interest at six per cent. per annum; said interest being paid up to August 1st, 1884, except coupons funded as aforesaid.

A deed of trust, dated May 29, 1865, executed by the Quincy and Toledo Railroad Company to John T. Terry, as trustee, to secure the payment of bonds amounting to $500,000, with interest at seven per cent. per annum, which deed became a lien on all that portion of railroad extending from the west bank of the Illinois river, opposite Meredosia, to Camp Point and Clayton, in the State of Illinois, a distance of 33.6 miles.

A deed of trust, dated the 1st day of February, A. D. 1867, executed by the Toledo, Wabash and Western Railway Company to Isaac H. Knox and James R. Jessup, as trustees, to secure an intended issue of bonds amounting to $15,000,000, with interest at seven per cent. per annum thereon. That of the bonds so intended to be secured by said trust deed only $2,610,000 are now outstanding.

Said deed of trust became a lien on all said railroad extending from Toledo, Ohio, to Meredosia and Naples, Illinois, and from Meredosia to Camp Point, Illinois; and also from Clayton, Illinois, to the east bank of the Mississippi river at Hamilton, Illinois; also on all property afterwards acquired by said Toledo, Wabash and Western Railway Company which might be used in connection with said railroad, and all property that said company might acquire in the city of Quincy, Illinois; and also all interests of
214 said company for traffic purposes with the Chicago, Burlington and Quincy Railroad Company.

A deed of trust, dated June 3d, A. D. 1869, executed by the Decatur and East St. Louis Railroad Company to Isaac H. Knox, as

trustee, to secure the payment of bonds amounting to $2,700,000, with interest at seven per cent. per annum thereon. Said mortgage became a lien on all said railroad extending from Decatur, Illinois, to East St. Louis, Illinois.

A deed of trust, dated May 17, 1879, executed by the Wabash Railway Company to Solon Humphreys and Daniel A. Lindley, as trustees, to secure the payment of bonds amounting to $2,000,000, with interest at the rate of seven per cent. per annum, which deed of trust became a lien subject to other prior liens on the following lines of railroad, with all their franchises, property, issues, rents, and profits: All the railroad of said Wabash Railway Company extending from the city of Toledo, Ohio, through the State of Indiana, and thence into the State of Illinois to Meredosia, with branch of said road to Naples and East Hannibal, and from Meredosia to Camp Point, in the State of Illinois, and with branch of said road from Clayton to the east bank of the Mississippi river, at Hamilton, in said State, and with branch of said road leading from Decatur to East St. Louis, in the same State. Said interest was paid up to October 1st, 1884.

A deed of trust, dated May 16, 1879, executed by the Wabash Railway Company to Alfred T. White, as trustee, to secure
215 the payment of bonds amounting to $500,000, with interest at seven per cent. per annum. Said deed of trust became a first lien on all of said railroad extending from Naples, Illinois, to East Hannibal, Illinois, and was given to secure the purchase-money of said property.

A deed of trust, dated March 9, 1865, executed by the North Missouri Railroad Company to Edwin D. Morgan and Louis H. Meyer, as trustees, to secure the payment of bonds amounting to $6,000,000, with interest thereon at the rate of 7 per cent. per annum. Said deed of trust became a lien on all that portion of the railroad of the Wabash Company extending from St. Louis, Missouri, to Coatsville, Missouri, and from Moberly, Missouri, to North Missouri Junction, about eight miles from Kansas City, Missouri. The railroad embraced in said deed of trust is about 354.1 miles in length.

A deed of trust, dated August 12, A. D. 1874, executed by the St. Louis, Kansas City and Northern Railway Company to the Farmers' Loan and Trust Company of the City of New York, as trustee, to secure the payment of bonds amounting to $3,000,000, with interest thereon at 7 per cent. per annum. Said mortgage became a lien on all the railroad of the St. Louis, Kansas City and Northern Railway Company, in the State of Missouri, being 353 miles in length, as then constructed, from North Market street, in the city of St. Louis, to the southern boundary line of the State of Iowa, and from
216 Moberly, Missouri, to North Missouri Junction, in Clay county, Missouri, and as the same might be thereafter constructed through Clay county, a distance of about eight miles to the bridge across the Missouri river at Kansas City, in Jackson county, Missouri.

Also as the same might then or thereafter be located in or through the county of St. Louis, to connect with the Union depot in

said city; also as the same might then or thereafter be located south of North Market street, in said city of St. Louis, together with all real estate, right of way, shops, rolling stock, depots, appurtenances, property, and franchises of said company.

Also certain blocks and lots of land, structures, and buildings described in said mortgage, a copy of which is marked Sub-Exhibit "F" No. 14, and is filed with the amended bill of the Wabash, St. Louis and Pacific Railway Company consolidated in this cause.

A mortgage, dated October 1st, A. D. 1878, executed by the St. Louis, Kansas City and Northern Railway Company to Henry F. Vail and Charles Parsons, as trustees, to secure the payment of bonds amounting to $1,000,000, with interest at 6 per cent. per annum, which interest has been paid to October 1st, 1885, which said mortgage became a lien on all the bridge of said last-named company, and all franchises thereof, and all the real estate, approaches, and appurtenances thereof situated in the county of St. Louis, on the south side of the Missouri river, and in the county of St. Charles, on the north side of said river, in the State of Missouri.

217 A deed of trust executed by the St. Louis, Kansas City and Northern Railway Company on the 9th day of July, A. D. 1878, to Solon Humphreys and George A. Leighton, as trustees, to secure the payment of bonds amounting to $388,500, with interest at the rate of 7 per cent. per annum, which interest has been paid up to October 1st, 1885. Said deed of trust became a second lien on all the bridge franchises and property last above described.

A deed of trust, dated February 15th, A. D. 1879, executed by the St. Louis, Kansas City and Northern Railway Company to the United States Trust Company of New York, as trustee, to secure the payment of bonds amounting to $2,350,000, with interest thereon at the rate of 7 per cent. per annum; that said deed of trust became a lien on a line of railroad purchased by said last-named company from the Council Bluffs and St. Louis Railroad Company, a corporation of the State of Missouri, extending from Elm Flats, in Daviess county, Missouri, in a northwesterly direction through the counties of Daviess, Gentry, Nodaway, and Atchison, in said State, to the boundary line between the States of Missouri and Iowa, a distance of 78 miles; and said deed of trust also became a lien on the leasehold interest of said St. Louis, Kansas City and Northern Railway Company in and to a certain other line of railroad extending from Council Bluffs, in the State of Iowa, in a southeasterly direction through the counties of Pottawatomie, Mills, Fremont, and Page, in said State, to the boundary line between the States of Iowa and Missouri, a distance of 65 miles, said last-mentioned

218 railroad having been leased by said St. Louis, Kansas City and Northern Railway Company from the Council Bluffs and St. Louis Railway Company, a corporation of the State of Iowa, as said railroad was then or might thereafter be constructed, together with all franchises, rights, and other appurtenances thereto belonging.

A guaranty mortgage, dated February 15th, A. D. 1879, executed

by the Council Bluffs and St. Louis Railway Company to the United States Trust Company of New York, intended to further secure the principal and interest of the issue of bonds last before mentioned. Said mortgage became a lien on all the right, title, and interest of said Council Bluffs and St. Louis Railway Company in and to the line of railroad last aforesaid, commencing at Council Bluffs, Iowa, and extending to the boundary line between the States of Iowa and Missouri, with all the rights, franchises, and property of mortgagor company therein, as then or thereafter constructed.

A deed of trust, dated July 15, 1879, executed by the St. Louis, Kansas City and Northern Railway Company to George I. Seney, of New York, to secure bonds amounting to $264,000, with interest thereon at the rate of 6 per cent. per annum. Said trust deed became a lien on all that part of said railroad extending from Roseberry, Missouri, to the State line between the States of Missouri and Iowa, being 10.1 miles in length; and also upon all the right, title, and interest of said grantor company in and to that portion of railroad between said State line and Clarinda, Iowa, a distance
219 of 11.4 miles, which said grantor company acquired from the Clarinda and St. Louis Railroad Company of Iowa.

A guaranty trust deed, dated July 15, 1879, executed by the Clarinda and St. Louis Railroad Company to George I. Seney, as trustee, to secure the payment of bonds amounting to $264,000, with interest at 6 per cent. per annum, being the bonds last aforesaid, which deed of trust became a lien on all the right, title, and interest of said last-mentioned company in the railroad commencing at the town of Clarinda, in the State of Iowa, and extending in a southerly direction through the county of Page, in the State of Iowa, to the boundary line between the States of Iowa and Missouri.

A deed of trust, dated July 1st, 1879, executed by the Champaign, Havana and Western Railroad Company to Henry W. Ford and Richard S. Brock as trustees, intended to secure the payment of bonds amounting to the sum of $1,450,000, of which $340,900 are now outstanding, with interest thereon at the rate of 7 per cent. per annum, which deed of trust became a lien on the railroad, property, and franchises of said grantor company, extending from the city of Champaign, in the county of Champaign, in the State of Illinois, running thence by way of White Heath, Clinton, Lincoln, and Mason City to Havana, near the east bank of the Illinois river, with a branch extending from White Heath to Decatur; all said points being in the State of Illinois, and said railroad and branch being of the aggregate length of 131 miles.

A deed of trust, dated on the first day of December, A. D.
220 1880, executed by the Wabash, St. Louis and Pacific Railway Company to Henry F. Spaulding and John T. Terry as trustees, intended to secure the payment of bonds amounting to $1,600,000, with interest thereon at the rate of 6 per cent. per annum; of which bonds, so intended to be secured, only $1,200,000 were ever issued. Said deed of trust became a lien on the railroad and franchises last-above described, and said bonds were issued for the purpose of being exchanged for the bonds last above described.

A deed of trust, dated February 6th, 1880, executed by the Centreville, Moravia and Albia Railroad Company to the Farmers' Loan and Trust Company as trustee to secure bonds amounting to $400,000, with interest thereon at six per cent. per annum, which deed of trust became a lien on the railroad and franchises of the last-named railroad company, projected to extend from a junction with the railroads of the Missouri, Iowa and Nebraska Railroad Company, in the vicinity of Centreville, Appanoose county, Iowa, to a junction with the railroad of the Central Iowa Railway Company, in the vicinity of Albia, Monroe county, Iowa, being about twenty-four miles in length.

A deed of trust, dated March 1st, 1881, executed by the Missouri, Iowa and Nebraska Railway Company to the Mercantile Trust Company of New York as trustee to secure the payment of bonds amounting to $2,269,000, with interest thereon at the rate of six per cent. per annum, and which deed of trust became a lien upon the railroad, franchises, and property of said last-named company, extending from Keokuk, Lee county, Iowa, to the south line of said county and State; thence through the counties of Clark,
221 Scotland, and Schuyler, in the State of Missouri, to the north line of said State: thence through the counties of Appanoose, Wayne, and Decatur to Van Wert, Iowa, said line being about 143½ miles in length.

That said deed of trust by its terms referred to a certain prior deed of trust, dated June 1st, 1870, executed by the Missouri, Iowa and Nebraska Railway Company to the Farmers' Loan and Trust Company as trustee to secure an issue of bonds amounting to $3,025,000, with interest, and being a lien on the same property in whole or in part. The said deed of trust of March 1st, 1881, and the deed of trust of June 1st, 1870, are to be taken together as representing substantially the same debt, and are to be taken together with any judgment or decree rendered by any competent court upon any of the bonds thereby secured.

A deed of trust, dated May 22, 1880, executed by the Toledo, Peoria and Western Railroad Company to Philip Henry Brown, Robert C. Martin, and John Paton as trustees to secure the payment of an issue of bonds amounting to $4,500,000, with interest thereon at seven per cent. per annum. Said deed became a lien on the railroad, franchises, and property of said last-named company, extending from a point at the eastern boundary of the State of Illinois, where it connects with the Toledo, Logansport and Burlington railway, and extending westwardly to the western boundary of the State of Illinois, in the city of Warsaw, and in the town of Hamilton, Illinois, on the Mississippi river, and also from La Harpe to Burlington, Iowa, in the State of Iowa. The said company
222 was a corporation of the State of Illinois, and not of Missouri, as by mistake stated in the amended bill of the Wabash Company. This court does not by this decree determine whether said last-mentioned deed of trust did or did not become a lien on any property in the city of Burlington, Iowa.

A deed of trust, dated May 22, 1880, executed by said Toledo,

Peoria and Western Railroad Company to Charles E. Whitehead, J. P. Giraud Foster, and William Hill, as trustees, to secure issues of income bonds aggregating to $3,900,000, with interest at the rate of 4 per cent. per annum, which deed of trust became a lien on all the railroad, franchises, and property last above described, but subject to the lien of the trust deed last above described.

A deed of trust, dated July 1, 1880, executed by said Wabash Railway Company to Henry F. Spaulding and John T. Terry, as trustees, to secure bonds amounting to $4,500,000, with interest at 5 per cent. per annum; that said trust deed became a lien on the railroad, franchises, and property, extending from Effingham, in the county of Effingham, Illinois, by way of Strawn, in Livingston county, in said State, to Streator, in the county of La Salle, with a branch to Altamount, Illinois, being the railroad formerly known as the Chicago and Paducah railroad, and also upon the railroad formerly known as the Chicago and Strawn railway, extending from Strawn aforesaid to or near Chicago, Illinois. Said bonds so secured were issued for the purchase-money of the railroad, franchises, and property described therein.

223 A deed of trust, dated May 31, 1881, executed by the Humeston and Shenandoah Railroad Company to W. J. Ladd and John T. Terry, as trustees, to secure bonds amounting to $2,684,000, with interest at the rate of 7 per cent. Said mortgage became a lien on the railroad, franchises, and property of said last-named company, extending from a point at Humeston, Iowa, 100 feet west of where the Chicago, Burlington and Quincy railroad crosses the Missouri, Iowa and Nebraska railroad; thence west to Shenandoah, Iowa, about 112 miles, with all its property and franchises.

A deed of trust, dated February 28, 1881, executed by the Des Moines Northwestern Railway Company to the Central Trust Company of New York and James Cheney, as trustees, for the purpose of further securing a portion of the bonds issued by the said Wabash Company and secured by its general mortgage aforesaid. Said deed of trust became a lien on all the railroad, property, and franchises of said grantor company, extending from Des Moines, in the State of Iowa, to Fonda, in said State, a distance of 114.9 miles, said railroad being a narrow-gauge road; also that the bonds secured by said deed of trust were so issued for the uses and purposes therein defined, and all rights as between the Des Moines Northwestern Railway Company and any party to this cause or the receivers herein arising from said mortgage or the lease of the railroad of said company to the Wabash Company or the contract under which they were made are hereby expressly reserved from the operation of this decree, and shall be hereafter enforced only in some court having jurisdiction of the property covered by said lease and mortgage.

224 And any claim that the receivers herein may set up against said Des Moines Northwestern Railway Company or the property thereof shall be litigated in some court having jurisdiction of said railroad, and any claim of said railroad company against said receivers or the property in their possession may be

litigated in the circuit court of the United States for the southern district of Iowa, eastern division.

A deed of trust, dated February 17, 1881, executed by the Attica, Covington and Southern Railway Company of Indiana to the Central Trust Company of New York and James Cheney, as trustees, to further secure a portion of the general mortgage bonds of the Wabash Company, secured by the general mortgage aforesaid; that said deed of trust became a lien on the railroad, property, and franchises of said Attica, Covington and Southern Railway Company of Indiana, extending from Attica, Fountain county, Indiana, to Covington, in said county, a distance of 14.5 miles, and the bonds thereby secured were equal to ten thousand dollars for each mile of said road.

A deed of trust, dated October 1, 1881, executed by the Wabash, St. Louis and Pacific Railway Company to the Mercantile Trust Company of New York, as trustee, to secure bonds amounting to $3,857,000, with interest at the rate of five per cent. per annum. Said deed of trust became a lien on the Cairo Division of the Wabash, St. Louis and Pacific Railway Company, extending from Danville, Illinois, to St. Francisville, in said State, and from Vincennes, Indiana, by way of St. Francisville, to Cairo, Illinois, with all the property thereof. Said bonds were issued in payment of the purchase-money of said railroad and property.

A deed of trust, dated April 1, 1879, executed by the St. Louis Bridge Company to J. C. Rogers and C. E. Tracy, as trustees, to secure an issue of bonds amounting to $5,000,000, with interest thereon at the rate of seven per cent. per annum; which deed
225 of trust became a lien on the property of said St. Louis Bridge Company, as therein described.

A deed of trust, dated November 3d, 1881, executed by the said Wabash Company to the Mercantile Trust Company of New York and James Cheney, as trustees, to secure bonds amounting to about $2,052,000, with interest thereon at six per cent. per annum; that said deed of trust became a lien on that portion of the railroad of the Wabash Company formerly known as the Detroit, Butler and St. Louis railroad, extending from a point on the Detroit, Grand Haven & Milwaukee railroad, in or at Detroit, Michigan, where the said Detroit, Butler and St. Louis railroad intersects it, and running thence in a southwesterly direction through the counties of Wayne, Washtenaw, Monroe, and Lenawee, in Michigan, and the counties of Fulton and Williams, in Ohio, and the county of De Kalb, in Indiana, to Butler, in said State, being about 114 miles in length, with all the property and franchises pertaining to said railroad and all property then in possession or which might be thereafter acquired for the convenience of said railroad and its business; that said trust deed was also given to remove all doubts as to the validity of a prior trust deed between the same parties and was given to secure the purchase-money of said railroad and property.

A deed of trust, dated February 1st, 1881, executed by the Peoria and Pekin Union Railway Company to the Central Trust Company of New York, as trustee, to secure bonds amounting to $1,500,000,

with interest at the rate of six per cent. per annum. Said deed of trust became a lien on the property and franchises of said Peoria and Pekin Union Railway Company. Also a second mort-
226 gage executed by said last-named company to the Central Trust Company of New York, as trustee, dated February 1st, 1881, to secure an issue of income bonds amounting to $1,500,000, with interest not exceeding six per cent. per annum; that said deed of trust became a lien on all said property last aforesaid, subject to the superior lien of said prior mortgage or trust deed.

A deed of trust, dated January 1st, 1867, executed by the Chicago, Cincinnati and Louisville Railroad Company to George T. M. Davis, as trustee, to secure bonds amounting to $1,000,000, with interest at the rate of seven per cent. per annum. Said deed of trust became a lien on all the railroad franchises and property of said last-named company extending from Peru, Indiana, to Laporte Indiana, a distance of 71.51 miles, such lien operating on said line whether then or thereafter constructed.

A deed of trust, dated June 1st, 1871, executed by the Indianapolis, Peru and Chicago Railway Company to Clifford A. Hand, as trustee, to secure bonds amounting to $275,000, with interest thereon at the rate of seven per cent. per annum. The said deed of trust became a lien on the railroad property and franchises of said last-named company extending from Indianapolis, in the county of Marion, Indiana, through the counties of Hamilton, Tipton, and Howard, to the city of Peru, in the county of Miami, Indiana, a distance of seventy-five miles.

A certain other second deed of trust, dated June 1st, 1881, executed by said last-named railroad company to Wager Swayne and
227 Abram W. Hendricks, as trustees, to secure an intended issue of bonds, not to exceed $2,275,000, of which only $2,000,000 were ever issued, with interest thereon at the rate of six per cent. per annum. Said deed of trust became a lien on the railroad franchises and property of said last-named company, being the railroad and property last described.

A deed of trust, dated June 1st, 1881, executed by the Michigan City and Indianapolis Railroad Company to Abraham W. Hendricks and Wager Swayne, as trustees. Said deed of trust became a lien on the railroad franchises and property of said last-named railroad company extending from Michigan City, in the county of Laporte, Indiana, to Laporte, in the same county, a distance of 12.75 miles. The said trust deed and the two trust deeds last before described are to be taken together as explaining each other.

A deed of trust, dated November 4, 1881, executed by the St. Louis, Jerseyville and Springfield Railroad Company to the Central Trust Company of New York and James Cheney, of Indiana, as trustees, to secure a portion of the said general mortgage bonds of the Wabash Company, amounting to $15,000 for each mile of railroad embraced therein. Said deed of trust became a lien on the railroad, franchises, and property of the said St. Louis, Jerseyville and Springfield Railroad Company extending from a point on the railroad of said Wabash Company at or near New Berlin, or between New Berlin and Spring-

field, in Sangamon county, Illinois, to its terminus at Grafton or Jersey Landing, in Jersey county, Illinois, a distance of 71.4
228 miles, and that said bonds were issued to secure the performance of the conditions on which the Wabash Company acquired said railroad and property.

A deed of trust, dated December 1st, 1881, executed by the Des Moines and St. Louis Railroad Company to the Central Trust Company of New York and James Cheney, as trustees. Said deed of trust was given to further secure a portion of the aforesaid general mortgage bonds of the Wabash Company, amounting to $15,000 per mile for each mile of the railroad hereinafter described. Said deed of trust became a lien on the railroad branches and property of said grantor company extending from Albia, Iowa, to Des Moines, Iowa, a distance of 67.3 miles, and was given to secure the performance of the condition on which said Wabash Company acquired said railroad and property.

A deed of trust, dated March 1st, 1881, executed by the Champaign and Southeastern Railway Company to the Central Trust Company of New York and James Cheney, as trustees, to further secure a portion of the general mortgage bonds of the Wabash Company, amounting to $15,000 for each mile of the railroad hereinafter described. Said trust deed became a lien on the railroad, franchises, and property of said grantor company extending from Champaign, Illinois, to Sidney, Illinois, a distance of 11.6 miles, and was given to secure the conditions on which said railroad and property was acquired by said Wabash Company.

A deed of trust, executed September 1st, 1880, by the Wabash, St. Louis and Pacific Railway Company to J. P. Giraud Foster
229 and Edward K. Goodnow, as trustees, to secure the payment of seventy-three promissory notes for the sum of one thousand dollars each, with interest at the rate of six per cent. per annum. Said deed of trust was given to secure the purchase-money of the property described therein, and became a lien on lots 13, 13A, 14, 15, 15A, 16, 17, 18, 19, 20, 21, 22, 23, and 24, all in the original plot of the city of Burlington, in the county of Des Moines, Iowa, and upon all the railroad iron therein and on all improvements and appurtenances thereof and all rents, issues, and profits thereof. The court further adjudges that four of said notes have been paid and satisfied, and further adjudges that the said deed of trust is a lien upon the property therein described superior to and free and clear of any lien or charges for the payment or contribution to the payment of any claims or demands whatever chargeable against such property herein.

A deed of trust, dated May 1st, 1873, made by the Boone County and Booneville Railway Company to J. M. Worden and R. A. Betts, as trustees, to secure bonds amounting to $100,000, with interest at 7 per cent. per annum. Said trust deed became a lien on a railroad extending from Columbia, Missouri, to Centralia, Missouri, a distance of about 21 miles.

A deed of trust, dated 1st of October, 1875, made by the St. Louis, Ottumwa and Cedar Rapids Railway Company to Solon Humphreys

and George S. Coe, as trustees, to secure bonds amounting to $322,500, with interest at the rate of 7 per cent. per annum. Said deed of trust became a lien on a line of railroad extending from
230 Ottumwa, Iowa, to its intersection with the St. Louis, Kansas City and Northern railway at the Missouri State line.

A deed of trust, dated August 1st, 1878, executed by the Brunswick & Chillicothe Railroad Company to George M. Rice, J. Kimball, and E. P. Burnham, as trustees, to secure bonds amounting to $304,500, with interest at the rate of 6 per cent. per annum. Said deed of trust became a lien on the railroad of said grantor company from its intersection with the St. Louis, Kansas City and Northern railway at Brunswick, Missouri, to Chillicothe, Livingston county, Missouri, a distance of about 36 miles.

A deed of trust, dated September 14, 1872, executed by the St. Louis, Council Bluffs and Omaha Railroad Company to James B. Eads and J. A. Jamison, as trustees, to secure bonds to the amount of $626,000, with interest at the rate of 6 per cent. per annum. Said trust deed became a lien on the line of railroad extending from Chillicothe, Missouri, to a point at or near Pattonsburg, Daviess county, Missouri, being about 43 miles in length.

A deed of trust, dated October 1st, 1879, executed by the Quincy, Missouri and Pacific Railroad Company to Solon Humphreys and Orville H. Browning, to secure bonds amounting to $1,204,000, with interest at the rate of 6 per cent. per annum. Said deed of trust became a lien on the line of railroad extending from a point in Missouri, opposite the city of Quincy, Illinois, to Trenton, Missouri, a distance of about 134 miles.

A deed of trust, dated October 1st, 1879, executed by the
231 Quincy, Missouri and Pacific Railroad Company to Amos Green and Charles H. Bull, as trustees, to secure income bonds to an amount not exceeding $2,000,000, with interest thereon at the rate of 6 per cent. per annum, if earned. Said deed became a lien on the line of railroad last above described.

A lease made by Eel River Railroad Company to the Wabash Company, dated August 26, 1879, of a railroad extending from Butler, Indiana, to Logansport, Indiana, on which rent was paid to June 1st, 1884.

A lease of the Quincy, Missouri and Pacific railway by Wabash Company, August 21, 1879. Said railroad intended to extend from West Quincy, Missouri, to some point on the Missouri river, but never constructed west of Trenton, Missouri, said rent being paid to January 1st, 1884.

A lease of the St. Joseph and St. Louis railroad, dated June 1st, 1874, to St. Louis, Kansas City and Northern Railway Company, said road extending from St. Joseph, Missouri, to North Lexington, in said State, the said rent being paid to March 1st, 1884.

A lease of the Boone County and Booneville railroad to the St. Louis, Kansas City and Northern Railway Company, dated May 1st, 1873. Said railroad extends from Centralia, Missouri, to Columbia, Missouri, and said rental was paid to May 1st, 1885.

A lease of the St. Louis, Ottumwa and Cedar Rapids railway to

the St. Louis, Kansas City and Northern Railway Company, dated October 1st, 1875. Said railroad extends from Coatsville, Missouri, to Ottumwa, Iowa, and said rent was paid to October 1st, 1884.

232 A lease of the St. Louis, Council Bluffs and Omaha railroad to the St. Louis, Kansas City and Northern Railroad Company, executed June 20th, 1878. Said railroad extends from Chillicothe, Missouri, to Pattonsburgh, Missouri, said rent being paid to January 1st, 1885.

A lease of the Brunswick and Chillicothe railroad to the St. Louis, Kansas City and Northern Railway Company, dated August 1st, 1878. Said railroad extends from Brunswick, Missouri, to Chillicothe, Missouri, and said rental is paid to August 1st, 1885.

A lease of the Council Bluffs and St. Louis railway (in Iowa) to St. Louis, Kansas City and Northern Railway Company, dated February 10, 1879. Said railroad extends from Council Bluffs, Iowa, to the State line between Missouri and Iowa, and said rent was paid to October 1st, 1884.

A lease of the Clarinda and St. Louis railroad to the St. Louis, Kansas City and Northern Railway Company, dated July 15, 1879. Said railroad extends from Clarinda, Iowa, to the State line between Iowa and Missouri. Said rent is paid to August 1st, 1884.

Lease by the Chicago and Western Indiana Railroad Company to the Wabash Company, dated October 25th, 1879, and a supplemental lease or contract, dated November 1st, 1882, by the Chicago and Western Indiana Railroad Company to the Wabash Company in which Anthony J. Thomas and Charles Edward Tracy are made parties of the third part as trustees.

A lease of the Centreville, Moravia & Albia railroad to the Missouri, Iowa and Nebraska Railway Company, dated February 6th, 1880. Said railroad extends from Centreville, Iowa, to Albia, Iowa, and said rental is paid up to January 1st, 1884.

233 A lease of the Missouri, Iowa and Nebraska railroad to the Wabash Company, dated September 3d, 1880. Said railroad runs from Keokuk, Iowa, to Van Wert, Iowa, and said rent is paid up to March 1st, 1884.

A lease of the Toledo, Peoria and Western railroad to the Wabash Company, dated May 22d, 1880. Said railroad has been hereinbefore described. The said rent was paid to April 1st, 1884.

A lease of the Humeston and Shenandoah railroad to the Wabash Company and Chicago, Burlington and Quincy Railroad Company, dated April 1st, 1881. Said railroad has been hereinbefore described.

A lease of the Des Moines Northwestern railroad to the Wabash Company, dated February 28th, 1881. Said railroad has been hereinbefore described, and said rent has been paid to December 1st, 1883.

A lease of the Attica, Covington and Southern railroad to the Wabash Company, dated July 18th, 1881. Said railroad has been hereinbefore described, and said rent was paid up to December 1st, 1883.

A lease of the St. Louis Bridge and Tunnel to the Wabash Com-

pany and Missouri Pacific Railway Company, dated July 1st, 1881; also includes other stipulations and provisions.

A lease of the Peoria and Pekin Union railroad to the Wabash Company and other companies, dated February 1st, 1881. This includes other stipulations and provisions. The property embraced in said instrument has been hereinbefore described.

234 A lease of the Indianapolis, Peru and Chicago railway to the Wabash Company, dated June 1st, 1881. Said railroad has been hereinbefore described, and said rental has been paid up to December 1st, 1883.

A lease of the Indianapolis and Michigan City railroad to the Wabash Company, dated June 1st, 1881. Said railroad has been hereinbefore described, and said rental has been paid up to December 1st, 1883.

A lease of the St. Louis, Jerseyville and Springfield railroad to the Wabash Company, dated November 22, 1880. Said railroad has been hereinbefore described, and said rental was paid up to December 1st, 1883.

A lease of the Des Moines and St. Louis railroad to the Wabash Company, dated March 1st, 1882. Said railroad has been hereinbefore described, and said rental has been paid up to December 1st, 1883.

A lease of the Champaign and Southeastern railway to the Wabash Company, dated March 1st, 1882. Said railroad has been hereinbefore described, and said rental has been paid up to December 1st, 1883.

A lease of the Hannibal bridge to the Wabash Company and the Missouri Pacific Railway Company, dated January 1st, 1883. Said bridge and property has been hereinbefore described.

A contract between the St. Joseph Union Depot Company, the Wabash Railway Company, and other companies for the construction and use of a depot and terminal facilities in St. Joseph, Missouri, dated September 2d, 1880.

A like contract with the Kansas City Union Depot Company, dated June 1st, 1876, the St. Louis, Kansas City and Northern Railway Company being a party thereto before said Wabash Company was created.

235 A lease and contract between Detroit Union Railway Depot and Station Company and the Wabash Company for the use of certain grounds by the last-named company and for certain privileges and advantages in said contract specified. Said lease and contract is dated October 20, 1881, and a copy thereof is hereby referred to as Sub-Exhibit "F" 89, filed herein with the amended bill of the Wabash Company.

A contract for the construction and use of depot and grounds in Hannibal, Missouri, between the Hannibal Union Depot Company and Wabash Company, dated June 30, 1881, a copy of said contract being Sub-Ehhibit "F" No. 90, filed with the amended bill of said Wabash Company in said cause.

A contract between the Hannibal and St. Joseph Railroad Company for the use by said last-named company of the bridge over

the Missouri river at Kansas City, Missouri, dated June 1st, 1880, a copy of which is filed as Sub-Exhibit "F" No. 83 in the volumes of exhibits aforesaid.

It is adjudged by the court that the lien of the general mortgage on any leasehold interest or other conditional interest held or owned by the Wabash Company in or to any line or lines of railroad or any property, rights, or franchises shall not be held to impair the right of the lessor or lessees of such line or lines or the person or persons under whom the said line or lines were conditionally held by the Wabash Company to terminate any such lease or conditional interest because of any breach of the terms on which the same was granted to said Wabash Company. The declaration herein of a lien on such property in favor of said general mortgage shall not
236 be held to revive any leasehold or conditional title in said Wabash Company in any instance when the same has been heretofore lawfully terminated or to prevent the future termination thereof for the breach of any condition for which such lease or interest might be otherwise lawfully terminated or forfeited; and in all cases when any line or lines of railroad have been by order or decree of court surrendered to the trustee or trustees in underlying and senior mortgages or to any receiver or person appointed by the court in whose jurisdiction the property is situated the said leases under which such line or lines were formerly held by said Wabash Company shall be, and are hereby, adjudged and decreed to be lawfully terminated.

The court further finds that since the filing of the original bill of complaint herein by the Wabash Company the holders of all the collateral trust bonds and the holders of a very large majority of the general-mortgage bonds, desiring to avoid any controversy as to the priority of said instruments as creating liens on any of the property embraced in the collateral trust, and also to avoid all delay in effecting the foreclosure of said instruments and the sale of all said property, have entered into an agreement between themselves and have invited all the other holders of general-mortgage bonds to become parties thereto.

And reference is hereby made to a copy of said agreement filed with the report of Edmund T. Allen, special master, to whom this cause was referred to take proof on specified issues. The said copy is hereby referred to with the same effect as if embodied herein.
237 By the terms of said agreement both instruments are to be foreclosed by judicial decree or decrees and all property embraced therein sold under such decree or decrees. A committee was by said agreement appointed authorized to purchase all said property or any portion thereof for the benefit of all bondholders joining in said agreement or accepting the same. The property so to be purchased shall be conveyed to a corporation to be organized for that purpose, and that the owners of both classes of bonds shall be entitled to the securities of such new company on such terms as are in said agreement prescribed.

The court therefore adjudges and decrees that if the property embraced in the general mortgage and collateral trust, respectively,

and the rights and interests declared to be comprised therein or subject thereto by the terms of this decree shall be sold under this decree, then all the holders of general-mortgage bonds or collateral-trust bonds who shall have signed or accepted said agreement and all other of said bondholders who shall not, within ninety days after the filing of this decree, file in this court their written dissent from said agreement and their desire to litigate the question of priority of the liens of said general mortgage and collateral trust, as to the property embraced in the latter instrument, shall be bound by the said agreement; and as to bondholders so bound the agreement aforesaid shall be held to settle and determine all such questions of priority and superiority.

In case any of the holders of general-mortgage bonds shall not sign or accept said agreement and shall, within the time
238 limited as aforesaid, file in this court their dissent therefrom and their desire that any question of priority as aforesaid shall be litigated in said cause, then such issue as may be necessary shall be made up as the court shall direct; but the foreclosure of said general mortgage and collateral trust and the sale of the property embraced therein shall not be delayed thereby; but such litigation shall be determined with reference to the proceeds of the sale of the property embraced in said collateral trust, a sufficient portion of which shall be retained under the control of the court to protect the rights of such possible litigants.

The court further finds that there is now pending in the supreme court of the State of Ohio a certain cause in which James Compton and certain other persons named in the record thereof seek to establish and maintain a lien adjudged in their favor by the court of common pleas of Lucas county, in the State of Ohio, upon the line of railroad of said Wabash Company, extending from Toledo, Ohio, to the eastern boundary of the State of Indiana, an appeal having been taken from the said judgment and decree of said court of Lucas county to said supreme court. It is ordered that this decree shall in no way affect the rights of said Compton and his co-complainants, as the same shall be determined by said supreme court. Any sale of the property aforesaid under this decree shall be subject to such rights and interests as said supreme court shall adjudge in said cause.

And now the court, being fully advised, does hereby order, adjudge, and decree that within sixty days from this date the Wabash Railway Company, or some person or persons for it, pay to
239 the Central Trust Company of New York, for the benefit of the parties entitled, the full sum of money found due as principal and interest aforesaid on said general mortgage bonds and coupons, together with interest from this date at the rate of six per cent. per annum, and all costs of this suit except such as the court may otherwise apportion; that in default thereof the said general mortgage be foreclosed, and all the property, rights, and interests aforesaid conveyed thereby or upon which said mortgage is a lien, as hereinbefore decreed, be sold, excepting as hereinafter set forth; and it is hereby ordered, adjudged, and decreed that the following-

named lines of railway, heretofore by order of this court severed from the Wabash system and surrendered to the trustees in underlying and senior mortgages or to some receiver, person, or persons appointed by the Federal court in whose jurisdiction said lines are situated, to wit: Havana Division, formerly known as the Champaign, Havana and Western railway; Indianapolis, Peru and Chicago railroad, the Chicago, Cincinnati and Louisville railroad, the Michigan City and Indianapolis railroad, together constituting the Indianapolis, Peru and Chicago Division; the Quincy, Missouri and Pacific railway, the Missouri, Iowa and Nebraska railway, the Cairo and Vincennes railway, the Danville and Southwestern railroad, and St. Francisville and Lawrenceville railroad, together constituting the Cairo Division, and the Toledo, Peoria and Western railroad, and also the Centreville, Moravia and Albia railroad, shall not be sold at said sale nor shall any interest in said lines or any or either of them pass by the sale herein provided for, but the complainants herein and all persons interested in said lines are hereby
240 remitted to the said several Federal courts in whose jurisdiction said lines are situated for the adjudication and settlement of their respective claims and interests. The court further finds the Wabash Company to be wholly insolvent and the property, rights, and interests embraced in the general mortgage wholly insufficient security for the amount of indebtedness found due as aforesaid. It is ordered that the sale of said property, rights, and interests be without redemption, and said sale, when made and confirmed by the court and all the conditions thereof fully performed, shall forever bar and foreclose all right, title, and equity of redemption of said Wabash Company in said railroads, property, interests, and franchises, and each part thereof, and also all the rights and interests of all persons claiming through or under said company subsequent to said general mortgage, and also all the rights and interests of all the parties hereto, except so far as the same are by this decree established or reserved.

It is also adjudged and decreed that said Wabash Company or some person for it, within sixty days from this date, pay to the Mercantile Trust Company of New York the amount of principal and interest found due as aforesaid on said collateral-trust bonds, with interest thereon from this date at the rate of six per cent. per annum, and also such share of the costs of this proceeding as the court shall apportion. In default thereof all the property, securities, rights, and interests covered by and described in the collateral trust shall be sold, and all the right, title, and interest of the Wabash Company therein and of all persons claiming through or under said
241 company be forever barred and foreclosed, and also all the rights and interests therein of all parties to said cause, except so far as the same are hereby established or reserved. The court finds and adjudges that all the property embraced in said collateral trust is wholly insufficient to pay the indebtedness secured thereby, and orders that the said property be sold without redemption.

It is further adjudged and decreed that if the holders of a ma-

jority of the general mortgage bonds, acting through their committee appointed under their agreement aforesaid, shall be satisfied that any branch or portion of the lines of railroad or property embraced in and covered by said mortgage and in or to which the Wabash Company had only a leasehold or conditional title shall be wholly insufficient in value to discharge the liens resting thereon superior to said general mortgage, and that sale of such branches or portions of railroad or property would add nothing to the purchase price obtainable for all said property, the commissioner shall, at the request of such committee, proceed to sell such branches or portions of railroad, with all the rights and property pertaining thereto, separately from the other property covered by said mortgage.

It appearing to the court that since the commencement of this cause the receivers herein have, under orders of this court, purchased and paid for, in whole or in part, certain lands and lots adjacent to the lines of railroad constituting the Wabash system, the title thereof being taken to James F. How, as trustee,
212 said How being the agent of said receivers, it is hereby ordered and decreed that all the lands and lots aforesaid so purchased by said receivers be sold with the main lines of road covered by the general mortgage; that an account be hereafter taken of all the moneys paid by said receivers for the lands and lots so purchased by them; that after the sale of the property embraced in the general mortgage there shall be taken out of the proceeds of such sale and out of the proceeds of all property sold in connection therewith a sum sufficient to repay to said receivers the amount of money expended by them in the purchase of the lands and lots aforesaid, so far as the same have been paid for; and said receivers shall hold the money so to be repaid to them, to be expended under the orders of court for the general purposes of said receivership. Upon the sale of said property and upon full compliance with the conditions of said sale by the purchasers thereof said James F. How, trustee, shall, upon order of court, make proper conveyance of the said property to such purchasers.

The court further orders that the sale under this decree of any property, rights, or interest covered by said general mortgage shall not have the effect of debarring the holders of said general mortgage bonds or their trustees from foreclosing any other mortgages or deeds of trust given to secure said general mortgage bonds or portions thereof, whether such other mortgages or deeds of trust embrace some of the lines of railroad and property covered by the general mortgage or otherwise; but if the sale or sales under
213 this decree shall not produce a sufficient sum to pay and satisfy all the said general mortgage bonds, the holders thereof and their trustees shall be at liberty to resort to such other mortgages and deeds of trust as fully in force and effect.

It is further ordered and adjudged that this decree or any sale made thereunder of the property embraced in the collateral trust shall not prevent the owners of the collateral trust bonds, so far as said bonds shall remain unpaid after the application of the proceeds of said sale thereto, from resorting to any other instrument,

mortgage, or pledge for the protection of the title to the property so embraced in said collateral trust; but the said bondholders and the purchasers of the property, rights, and interests embraced in the collateral trust at any sale made under this decree shall be at liberty to resort to such other instrument, mortgage, or pledge for the protection of their title to the property so embraced in said collateral trust and sold under the foreclosure thereof.

The court orders and decrees that, subject to conditions aforesaid, the property covered by the general mortgage and collateral trust be sold at public auction to the highest bidder or bidders at the east front door of the United States court house, in the city of St. Louis, in the State of Missouri, between the hours of 10 a. m. and 4 p. m., on such day as the commissioner hereinafter named shall appoint, with power to the commissioner making the sale for proper cause to postpone said sale without further notice, save an announcement of such postponement by said commissioner at the time fixed for such sale.

Public notice of the time, place, and terms of said sale
244 shall be given by publication, at least once a week for six successive weeks before said sale, in one public newspaper in each of the following-named cities: New York city, New York, St. Louis, Missouri, and such other places as the courts having ancillary jurisdiction of this cause or any of them may direct. Said notice shall describe the property to be sold in general terms and shall refer to this decree for more particular description.

Said sale shall be made in manner following:

The commissioner executing this decree shall, except as hereinabove otherwise provided, first offer for sale all the right, title, and interest of the Wabash Company in and to all the lines of railroad covered by and described in the general mortgage, and such other lines, interest, and property as have been adjudged in this decree to have become subject to the lien of said mortgage, with all the franchises, rights, interest, and property, real and personal, pertaining thereto, and all rights of way, equipments, structures, shops, tools, machinery, and materials properly belonging or appurtenant to said lines and each of them, excepting only such of said lines, with the property, franchises, interest, and appurtenances, as are herein adjudged to be subject to said general mortgage only to the extent of the leasehold or conditional title of the Wabash Company therein, and also excepting all property described in the collateral trust, whether covered by the general mortgage or not so covered, and which may be sold or offered for sale separately, as hereinbefore directed. In case any such line or property shall not be sold together with the other property covered by the general mortgage, the same shall be offered separately, and the commissioner shall
245 conditionally accept the highest bids received therefor.

The commissioner shall then offer for sale the property embraced in the collateral trust in manner following: He shall offer all the bonds, stocks, and choses in action specified in said collateral trust together, and note the bids received therefor. He shall also offer the cars, rolling stock, and equipment described in said instru-

ment for sale together, and note the bids received therefor. He shall then offer the steamers described in said instrument together, and note the bids received therefor. He shall then offer separately the real estate or terminal interests in Cook county, Illinois, described in said instrument, and note the bids received therefor.

After said properties and securities covered by the collateral trust have been so offered for sale separately, the commissioner shall proceed to offer the whole thereof for sale together, and he shall conditionally accept the highest bids made for said lots or parcels of property and securities, when offered separately, or the highest bid for all said property when offered together, according as the one method or the other shall produce the largest sum in the aggregate.

Before any bid for any property sold under this decree shall be conditionally accepted by the commissioner he shall require the person or persons making such bid to deposit with him or subject to his order in some bank to be by the commissioner selected a sum in cash equal to ten per cent. of the whole amount of said bid, when the amount of such bid shall be more than $100,000, and twenty per cent. on all bids below that sum.

246 As soon as any sale or sales shall have been made by the commissioner, in pursuance of this decree, he shall report the same to this court for confirmation, further certifying to the court compliance by the purchaser or purchasers with the conditions hereinbefore prescribed.

If any such bid shall be accepted by the court and the party making the same shall fail to comply with all the conditions of sale and all orders of the court made or to be made with respect thereto, then the sum so deposited shall be forfeited and shall be applied to the payment of the expenses of resale or the costs of this cause or the payment of the bonds aforesaid, as the court shall order.

In case any bid shall be rejected by the court the deposit made by the bidder shall be returned.

And if any bid or bids shall be accepted and confirmed by the court and all the conditions of sale shall be fully complied with, or if the persons making such bids shall perform all such conditions as the court shall accept as sufficient for the time being and when the court shall so order, the commissioner shall execute to such purchaser or purchasers deeds of conveyance and transfer of all the property and interests sold by him under this decree.

And thereupon the complainants herein, to wit, The Central Trust Company of New York and James Cheney, as trustees of said general mortgage, and also The Mercantile Trust Company, defendant herein, as trustee of the collateral trust mortgage, and the mortgagee, the Wabash, St. Louis and Pacific Railway Company, shall severally and in due form convey to said purchasers all their interest as trustees and as mortgagors in and to the property sold by said commissioners to said purchasers or any of them.

247 Whenever any bid shall be accepted and approved by the court the party making the same shall deposit in such depository as the court shall direct such additional cash payment as

the court may require and make such further cash deposits as may be ordered by the court.

It is further ordered that after the purchasers aforesaid shall have made such cash payments as the court shall order the said purchasers shall have the right to discharge the remainder of their respective bids by the use of the bonds aforesaid—that is to say, by using the general mortgage bonds and the collateral trust bonds to make payment for the property so purchased. All said bonds and coupons shall be received in making the payments to which they may be applied, respectively, ratably and without discrimination, and at such valuation as would be equivalent to the distributive share applicable thereto if the whole sum bid had been paid in cash.

It is further adjudged that in order to enable the purchasers of said lines of railroad and property to raise the means necessary to discharge all claims, debts, and demands equitably chargeable against the same in preference to said bonds, by the use of the securities of the new corporation intended to be organized to take said lines of railroad or the chief part thereof, if such purchasers shall make such cash payments as the court shall require and order and discharge the remainder of their bids, respectively, by the payment of cash or the use of bonds as aforesaid, such purchasers shall be entitled to the conveyance and assignment of the property purchased by them and each of them as hereinbe
248 fore provided, but such conveyance or assignment shall not have the effect of discharging any part of said property from the payment or contribution to the payment of claims or demands chargeable against the same, whether for costs and expenses, the expenses of the receivership of said property, and the full payment of all the debts and liabilities of said receivers, or upon intervening claims allowed or to be allowed, or upon any other claims or allowances that have been or may be charged against said property or any part thereof or said receivers, either by this court or by any other circuit court exercising ancillary jurisdiction or by any other court to which any of the parties hereto, including the receivers, have been hereby remitted in proceedings or actions ancillary hereto or otherwise.

Nor shall such conveyance, transfer, or assignment withdraw any of said railroads, property, or interests to be sold under this decree, as hereinbefore directed, from the jurisdiction of this and the other courts aforesaid, but the same shall remain in the custody of the receivers until such time as the court shall on motion direct said property in whole or from time to time, in part, to be released to said purchaser or purchasers or any of them, and shall afterwards be subject to be retaken and, if necessary, resold if the sums so charged or to be charged against said property or any part thereof or said receivers as aforesaid *said* shall not be paid within a reasonable time after being required by order of this or said other courts. The conveyance and transfer of said property shall be subject to the power and jurisdiction of the said courts, and the pur-
249 chasers of any part of said property shall thereby become and remain subject to said jurisdiction so far as necessary to

the enforcement of this decree; and such jurisdiction shall continue until all the claims and demands that have been or may be allowed against said property or any part thereof or said receivers by order of said courts shall be fully paid and discharged. The provisions aforesaid shall apply to the purchasers at said sale and to all persons taking said property through or under them.

The commissioner executing the decree shall apply the proceeds derived from said sale, and also all the proceeds derived from anybody, natural or artificial, in satisfaction of the claims charged or to be charged against said property and all parts thereof as aforesaid in the manner following:

First. To the payment of all the costs of this cause in this court and in all other courts wherein ancillary jurisdiction was taken, including such allowances as this and said other courts have or shall make for solicitors' and counsel fees and for the services of all trustees, masters, commissioners, clerks, stenographers, printers, and others rendering services in the prosecution of the several causes consolidated herein or ancillary to the original cause; also all the expenses of making said sale or sales and otherwise enforcing and carrying out this decree.

Second. To the payment of all the indebtedness of the receivers herein and all other claims which said courts or some of them may adjudge to be superior to said bonds and to the payment of all labor and supply claims falling within the order of this court of May 29, 1884, which now are or may be unpaid.

250 Third. In payment of all expenses incurred by the committee of bondholders and the purchasing committee in bringing about the said agreement between the holders of the general mortgage bonds and the holders of the collateral trust bonds, and of carrying the same into effect, and generally in the reorganization of the Wabash Company, including a proper remuneration for the members of said committee.

Fourth. To the payment of the two classes of bonds aforesaid, *pro rata*, as far as the same can be paid in whole or in part out of the proceeds of said sale or sales or by the application of the bonds aforesaid in lieu of purchase-money under the provisions of this decree relating thereto.

Edmund T. Allen is hereby appointed commissioner to execute this decree. He shall make and file in this court an affidavit faithfully and impartially to execute this decree and to obey the orders of this and the other courts aforesaid in the discharge of the duty hereby imposed. All claims and demands against said property or said receivers or the proceeds of said sales not hitherto or herein adjudged and determined, whatever the character of such claims and demands, are hereby reserved for future action by this and said other courts; and all questions arising under any answers of parties hereto and on all cross-bills and other pleadings or intervening petitions not herein or heretofore determined are hereby reserved for future adjudication, the settlement of the same being held not necessary to the purposes of this decree.

It is further ordered that the Central Trust Company of
251 New York and James Cheney and the Mercantile Trust Company of New York or some of them present this decree to the other courts entertaining ancillary jurisdiction of the said consolidated cause, and pray that the same be approved by said court and entered as the decree thereof.

All bids conditionally accepted by said commissioner for any railroad property or interest ordered to be sold by this decree shall be reported to said courts as their several jurisdictions may require and be subject to confirmation or rejection by said courts.

The court also adjudges that the indemnity mortgage referred to in the bills of complaint herein made by the Wabash Company to the St. Louis, Iron Mountain and Southern Railway Company is subject and inferior to the lien of the general mortgage and collateral trust.

The statements in this decree of the amount of bonds outstanding or of interest or rental paid or unpaid on any of the mortgages, deeds of trust, leases, or contracts herein declared to be superior to the lien of the general mortgage or collateral trust shall not be taken as adjudicating or determining the matters so stated. Such amounts are so stated in this decree only for the purpose of enabling persons who may desire to purchase said property to determine approximately the amount of prior liens or other charges upon said property and each part thereof.

It is ordered that said commissioner make full report of his doings to this court.

(Signed) DAVID J. BREWER,
Circuit Judge.
SAMUEL TREAT,
District Judge.

252 On March 22nd, 1886, intervenor filed herein his following petition, praying the surrender to him of said mortgaged and leased property:

Circuit Court of the United States, Eastern District of Missouri. In Equity.

THE CENTRAL TRUST COMPANY OF NEW YORK and Others
vs.
THE WABASH, SAINT LOUIS AND PACIFIC RAILWAY COMPANY and Others.
} Consolidated Cause.

To the honorable the judges of the circuit court of the United States for the eastern district of Missouri:

The petition of George I. Seney, of the city of New York, respectfully shows to the court—

That your petitioner is one of the defendants in the above-entitled cause, and that heretofore your petitioner filed his petition herein for leave to commence proper action or actions in the Federal or

State courts against Solon Humphreys and Thomas E. Tutt, as receivers of said Wabash, Saint Louis and Pacific Railway Company, for the foreclosure of the mortgage executed to your petitioner by the Saint Louis, Kansas City and Northern Railway Company, dated July 15, 1879, and known as the Clarinda Branch mortgage, and for such other relief in connection therewith as your petitioner might deem proper to pray; that the hearing of said petition is now pending before this court.

That your petitioner has duly instituted foreclosure actions in the circuit court of Nodaway county, Missouri, and Page county, Iowa; that a copy of the verified bills of complaint of your peti-
253 tioner duly filed in the said two foreclosure actions exact in every respect, except the title of the court in which the said actions were brought, is hereto annexed, marked Exhibit A, to which and to the defaults therein described your petitioner prays leave to refer with the same effect as if the same was set forth at length herein.

Your petitioner further shows that, in pursuance of the terms of said mortgage and in compliance with the request of a large number of the holders of the said bonds, applications on behalf of your petitioner and said bondholders are about to be made in the courts in which the two foreclosure actions brought by your petitioner are pending for the appointment of a receiver of the said mortgaged premises and property, with the usual powers of receivers in like cases; that it is the wish of your petitioner and of the said bondholders that upon the appointment of such receiver all the property and premises described in said mortgage and bills of complaint may be by this court conveyed, assigned, transferred, and set over to said receiver, to be held, operated, and managed by him in accordance with the directions of the order or orders appointing him and of the further orders and rules and practice of the courts making such appointment.

Wherefore your petitioner prays that Solon Humphreys and Thomas E. Tutt, as receivers of the property known as the Wabash, Saint Louis and Pacific railway, their officers, agents, attorneys, and employees, may be ordered and directed, upon such notice as to this honorable court seems proper, to transfer, convey, and surrender to the receiver appointed or to be appointed in the foreclosure actions above mentioned all of the property, privileges, and premises whatsoever described in said mortgage, and that the said receiver thereupon have, hold, possess, operate, and manage the same upon the trusts and with the powers above mentioned and referred to.

254 And your petitioner, as in duty bound, will ever pray, etc.

Dated March 17th, 1886.

GEO. I. SENEY, *Petitioner.*

STEWART & BOARDMAN,
Solicitors for Petitioner for the Purpose of This Motion.
THEODORE SHELDON, *Of Counsel.*

STATE OF NEW YORK, } ss:
City and County of New York, }

George I. Seney, being duly sworn, deposes and says that he is the petitioner above named, and that the foregoing petition is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

GEO. I. SENEY.

Subscribed and sworn to before me this 17th day of March, 1886.
[SEAL.] WALDRON WILLIAMS,
Notary Public, N. Y. Co.

255 EXHIBIT "A."

In the Circuit Court of —— County, State of ——. In Equity.

GEORGE I. SENEY, Complainant,
against
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY and Others, Defendants.

Bill of Complaint.

Stewart & Boardman, complainant's solicitors, 49 Wall street, New York.
Theodore Sheldon, of counsel.

256 In the Circuit Court of —— County, State of ——. In Chancery.

To the honorable the judges of the circuit court:

George I. Seney, a citizen of the State of New York, brings this his bill of complaint against the Wabash, St. Louis and Pacific Railway Company, a corporation created by and existing under the laws of the States of Missouri, Illinois, Indiana, Ohio, and Michigan, and the other hereinafter-named defendants.

And thereupon your orator complains and says that on or about the fifteenth day of July, A. D. 1879, the St. Louis, Kansas City and Northern Railway Company, a corporation created by and then existing under the laws of the State of Missouri, made and executed its two hundred and sixty-four bonds, bearing date on the first day of August, A. D. 1879, each for the sum of one thousand dollars, all of which were made payable to your orator or bearer forty years after the said date, for value received, at the National Bank of Commerce, in the city and State of New York, with interest from date thereof at the rate of six per centum per annum, payable semi-annually, to wit, on the first days of August and February in each year, on the presentation and surrender of the proper cou-
257 pons annexed thereto, both the principal and interest of the said bonds being payable in gold coin of the weight and fineness as fixed by the laws of the United States then in force; all of which said bonds and coupons were so made and executed in ac-

cordance with a resolution duly adopted by the directors of the said railway corporation and a further resolution duly adopted by the holders of more than two-thirds in amount of the stock of the said corporation at meetings duly held shortly prior to the said fifteenth day of July, 1879, and also in accordance with the terms of a certain lease theretofore made and entered into by and between the said corporation and The Clarinda and St. Louis Railway Company, one of the defendants herein, which said lease is more fully referred to hereinafter, and that immediately thereafter the said St. Louis, Kansas City and Northern Railway Company issued, sold, and delivered each and all of the said 264 bonds, with the coupons attached, all of which said bonds are now outstanding in the hands of divers persons as owners and holders thereof, whose names are in great part unknown to your orator.

And your orator further shows unto your honors that on or about the said fifteenth day of July, 1879, the said St. Louis, Kansas City and Northern Railway Company, being the owner and in the possession of a certain line of railway formerly known as the Clarinda and St. Louis Railroad Company of Missouri, and being also the lessee and in the possession of a certain other line of railway known as The Clarinda and St. Louis Railroad of Iowa, one of the defendants herein, in order to secure the prompt payment of the principal and interest of the said 264 bonds, as the same should mature, and in pursuance of the further provisions of the said resolutions and lease, did make, execute, acknowledge, and deliver to your orator its certain mortgage deed, wherein and whereby it granted and conveyed to your orator, as trustee, and to your orator's successors and assigns

in trust all and every part and parcel of the continuous line
258 of railroad extending from the east side of the Nodaway river, in the county of Nodaway and State of Missouri, to the town of Clarinda, in the county of Page and State of Iowa, and all right, title, and interest therein as then owned, leased, or held by the said St. Louis, Kansas City and Northern Railway Company, commencing on the main line of the Omaha Division of the St. Louis, Kansas City and Northern railway at a point on the east side of the Nodaway river, in Nodaway county, Missouri, and extending from thence in a northerly direction to the town of Clarinda, in the county of Page, in the State of Iowa, as the said railroad then was or might be thereafter constructed, maintained, operated, or acquired, together with all the privileges, rights, franchises, real estate, right of way, depot, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereunto belonging.

And your orator shows unto your honors that it was further covenanted and agreed in and by the said mortgage deed that if the principal of the said bonds or any part thereof should not be paid by the said St. Louis, Kansas City and Northern Railway Company when the same became due, or if any instalment of interest upon the said bonds or any part thereof should not be paid within sixty days after the same became due and payment thereof should have been demanded at the place of payment therein mentioned, then and in either of the said events the principal of the bonds

thereby secured should become due and payable, and your orator or his successor, successors, or assigns in trust should, whenever requested so to do by the holder or holders of fifty or more of the bonds thereby secured, take possession of all the said mortgaged property and during such default should manage and control the same and collect and receive all the tolls and income thereof, and upon demand in writing of the holder or holders of fifty or more of the said bonds your orator or his successor, successors, or assigns in trust should proceed to foreclose the said mortgage deed and sell the property thereby conveyed, and should apply the net proceeds of such sale, first, to the payment of the costs and expenses of
259 the said trust, including the commission or compensation of the trustee; second, to the payment of the principal and interest of the said bonds, and, third, to pay any surplus to the said St. Louis, Kansas City and Northern Railway Company, its successors or assigns.

And your orator further shows unto your honors that in and by the said mortgage deed the said St. Louis, Kansas City and Northern Railway Company did further agree, for itself, its successors, and assigns, that it would, from time to time, pay all the expenses of the said trust, including the compensation and expense of the transfer agent therein provided for and appointed, and that in and by the said mortgage deed it was further agreed that nothing therein contained should be held or construed to prevent or interfere with a foreclosure thereof, the appointment of a receiver, or any other act or proceeding appropriate or customary in such cases by any court of competent jurisdiction; and it was also further agreed that after default in payment of the interest or principal of any of the bonds thereby secured, and when such default should have continued for a space of sixty days after demand as thereinbefore set forth, then your orator, his successor, successors, and assigns in trust, in any suit, action, or proceeding instituted at the request of the holder or holders of fifty or more of the bonds thereby secured, should be entitled as a matter of right to the appointment by any court of competent jurisdiction of a receiver of the railroad, rolling stock, and all property or estate conveyed by the said mortgage deed, and such receiver should have all the powers and rights usually possessed by receivers in similar cases; which said mortgage deed was, on or about the seventh day of August, 1879, duly filed for record and recorded in the recorder's office of each of the counties of Nodaway, in the State of Missouri, and Page, in the State of Iowa, through which the line of railway mentioned therein was situated, and a true copy of which mortgage deed is hereunto annexed, marked "Exhibit A," and to which your orator refers and prays that the same may be taken as a part of his bill of complaint as fully
260 as if set forth *in extenso* herein, the original whereof or a duly certified copy thereof will be produced and proved upon the final hearing in this cause.

And your orator further shows unto your honors, upon information and belief, that after the execution, delivery, and recording of its said mortgage deed to your orator, and on or about the tenth day

of November, 1879, the said St. Louis, Kansas City and Northern Railway Company and the Wabash Railway Company, a certain other corporation created by and then existing under the laws of the States of Illinois, Indiana, Ohio, and Michigan, claimed to become and be consolidated with each other under the corporate name of the said The Wabash, St. Louis and Pacific Railway Company, the defendant herein, and to become and be a separate and distinct corporation created by and existing ever since under the laws of the States of Missouri, Illinois, Indiana, Ohio, and Michigan, and that immediately upon the said consolidation the said St. Louis, Kansas City and Northern Railway Company and the said The Wabash Railway Company, and each of them, ceased to exist, and that they have not nor has either of them since had any corporate existence whatsoever; that by the terms of their said consolidation the said St. Louis, Kansas City and Northern Railway Company and the said The Wabash Railway Company consolidated all their property, capital, franchises, debts and liabilities, and obligations of any kind whatsoever, including the mortgage indebtedness to your orator hereinbefore set forth, and that immediately upon said consolidation the said The Wabash, St. Louis and Pacific Railway Company entered upon and acquired the possession and control of all the property conveyed by the said mortgage deed to your orator, and continued such possession and control until on or about the twenty-ninth day of May, 1884, and by the terms of which said consolidation, as your orator is advised and believes, the said The Wabash, St. Louis and Pacific Railway Company became and is obligated to pay to your orator the said mortgage indebtedness of the
261 said St. Louis, Kansas City and Northern Railway Company, and each and every part thereof.

And your orator further shows unto your honors and charges the fact to be that the semi-annual instalment of interest upon the said issue of bonds, secured by the mortgage deed as aforesaid, falling due on the first day of February, 1885, and evidenced by 264 coupons or interest notes, each for the sum of thirty dollars ($30), in all the sum of seven thousand nine hundred and twenty dollars ($7,920), maturing on the last-named date, has not nor has any part thereof been paid; that the said St. Louis, Kansas City and Northern Railway Company and the Wabash, St. Louis and Pacific Railway Company, and each of them, wholly neglected and refused to pay or cause to be paid the said instalment of interest or the said 264 coupon or interest notes due on the last-named date, and any of them, but wholly made and still make default in the payment of the said coupon or interest notes, and each of them, and that the same and each and all of them are still due and unpaid; that on the said first day of February, 1885, a large number of the said coupon or interest notes, evidencing the semi-annual instalment of interest, due on that day, were actually presented for payment at the National Bank of Commerce in the city and State of New York, the place where the same were by the terms of the said bonds payable, and payment thereof or any part thereof was demanded and refused; that more than sixty days have elapsed since the said instalment of interest

and the said 264 coupon or interest notes became due and since payment of those presented at the said place of payment has been there demanded and refused, by reason whereof and in accordance with the terms and conditions of the said bonds and the said mortgage deed securing the same the principal of each and all of the said 264 bonds and the indebtedness represented thereby has become and is now wholly due and payable, and your orator has thereby become and is now entitled to a foreclosure of the said mortgage deed.

262 And your orator further shows unto your honors and charges the fact to be that the two succeeding semi-annual instalments of interest upon said bonds, falling due on the first day of August, 1885, and the first day of February, 1886, have not nor has either of them nor any part of either of them been paid, and that the same now are wholly in arrears and unpaid.

And your orator further shows unto your honors and, upon information and belief, charges the fact to be that the defendant, the said The Wabash, St. Louis and Pacific Railway Company, for a long time since has been and is now insolvent and unable to pay its floating debt or the interest accruing on its bonds and other obligations, for the payment whereof it is liable, and that under and by virtue of proceedings now pending in the circuit court of the United States for the eastern district of Missouri and other districts the defendants, Solon Humphreys and Thomas E. Tutt, were on the twenty-ninth day of May, A. D. 1884, appointed receivers of all the property whatsoever of the said The Wabash, St. Louis and Pacific Railway Company, including all the security conveyed to your orator by the said mortgage deed, together with various other lines of railway, and that the said receivers ever since have held and now hold the possession of said property; that, in accordance with orders heretofore entered by the said court and in order to meet certain debts made and contracted by the said The Wabash, St. Louis and Pacific Railway Company other than those due to your orator, the said receivers have already issued receivers' certificates for large sums of money, to the payment of which your orator is apprehensive your orator's said mortgage security may be subjected in preference to the said mortgage deed to your orator, all of which is contrary to equity and good conscience and manifestly to the wrong and injury of your orator and of the owners and holders of the bonds which he represents.

And your orator further shows unto your honors and, upon information and belief, charges the fact to be that the said

263 Solon Humphreys and Thomas E. Tutt, receivers as aforesaid, are now and have been since the date of their said appointment so operating, managing, and controlling your orator's said mortgage security as to impair and greatly decrease the value thereof; that the said receivers have not kept and do not keep the said mortgage security in good order, condition, and repair, but have allowed and are now allowing the same to become greatly wasted, damaged, and impaired; that in their attempts to keep in operation the various lines of railway composing the entire system committed to their

care and to meet many and excessively large obligations due to creditors of the said The Wabash, St. Louis and Pacific Railway Company other than your orator the said receivers have diverted and are now diverting the earning and income of your orator's said mortgage security to the payment of operating and other expenses incurred on behalf of other and different lines of railway committed to their care as aforesaid; that the said receivers have not kept and are not now keeping the rolling stock appertaining, belonging to, and constituting a part of your orator's mortgage security in, upon, or in use connected with the said lines of railway mortgaged to your orator, but have allowed and do still allow the same to be scattered over the said entire system and used and operated for the sole benefit of lines of railway in their said care other than those conveyed to your orator; all of which is greatly to the waste and damage to your orator's said mortgage security and is manifestly to the wrong and injury of your orator and of the owners and holders of the bonds which he represents.

And your orator further shows unto your honors that on or about the fifteenth day of July, A. D. 1879, The Clarinda and St. Louis Railroad Company, a corporation created by and then and now existing under the laws of the State of Iowa, and one of the defendants herein, did demise and lease to the said St. Louis, Kansas City and Northern Railway Company for the term of ninety-one years from the said date its entire line of railroad, then located or thereafter to be constructed, extending from the said town of
264 Clarinda, in the State of Iowa, in a southerly direction through the county of Page, in the said State, to the boundary line between the States of Iowa and Missouri, the same being so much of the security conveyed to your orator as aforesaid as lies within the said State of Iowa; that in and by the terms of the said lease the said St. Louis, Kansas City and Northern Railway Company, for the purpose of obtaining funds to construct and equip the said leased line of railway, and to also construct and equip its own line of railway, extending, as is hereinbefore set forth, from the said State line to a point on the Omaha Division, in the county of Nodaway and State of Missouri, did agree to issue its own bonds to the amount of twelve thousand dollars per mile for every mile of the said continuous railway, extending from the line of the said Omaha Division to the town of Clarinda; that by the terms of the said lease the said St. Louis, Kansas City and Northern Railway Company, to secure the payment of the said bonds and interest thereon, agreed to execute a first mortgage on all its right, title, and interest in and to the said continuous line of railroad and appurtenances, as then owned by or therein leased to the said lessee railway company, and that in and by the said lease it was further agreed that for the purpose of further securing the payment of the principal and interest of the said bonds and to increase the market value of the same and to induce persons to become the purchasers thereof the said defendant, The Clarinda and St. Louis Railroad Company, should execute a guaranty mortgage or deed of trust conveying its said line of railway, with all its property of every description, and that the said mort-

gage deeds should stand as security for the bonds so to be issued, subject only to the terms and conditions of the said lease; and your orator prays leave to produce and refer to the original of the said lease or a duly authenticated copy thereof on the hearing of this cause.

And your orator further shows unto your honors that, in accordance with the terms and provisions of said lease, the said St.
265 Louis, Kansas City and Northern Railway Company did make, execute, and deliver its said bonds to the amount aforesaid, and did secure the same by its mortgage deed conveying the said continuous line of railway from a point on the Omaha Division in Nodaway county, Missouri, to the town of Clarinda as aforesaid, and which said bonds and mortgage deed securing the same are the identical bonds and mortgage deed securing the same made, executed, and delivered to your orator by the said St. Louis, Kansas City and Northern Railway Company, as hereinbefore set forth.

And your orator further shows unto your honors that, in accordance with the further terms and provisions of the said lease, and on or about the 15th day of July, 1879, the said Clarinda and St. Louis Railroad Company, in order to increase the market value of the said bonds and to induce persons to become the purchasers thereof and to further secure and guarantee the payment of the same and interest thereon to an amount that on all the said bonds would equal the sum of twelve thousand dollars per mile for each and every mile of so much of the said continuous line of railroad as was situated in the State of Iowa, did make, execute, acknowledge, and deliver to your orator its certain mortgage deed, whereby it granted and conveyed unto your orator, as trustee, and to your orator's successor, successors, or assigns in trust all its right, title, interest, and estate in and to all and every part and parcel of its railroad aforesaid, commencing at the town of Clarinda, in the State of Iowa, and extending in a southerly direction through the county of Page, in the State of Iowa, to the boundary line between the States of Iowa and Missouri, with all its rights, privileges, and franchises, together with all the real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, and cars, as the same then were or might thereafter be constructed, maintained, operated, or acquired, with all the other appurtenances thereunto belonging; which said mortgage deed was, on the twenty-ninth day of July, 1879, duly filed for record and recorded in the recorder's office of said county
266 of Page, in the State of Iowa, through which the line of railway mentioned therein was situated, and the original of which mortgage deed or a duly certified copy thereof your orator prays leave to produce and refer to upon the hearing of this cause.

And your orator further shows unto your honors that, in pursuance of the terms and conditions contained in the said mortgage deed made to your orator by the St. Louis, Kansas City and Northern Railway Company, and by reason of the still continuing defaults in the payments of the sums hereinbefore set forth your orator, as such trustee, has been and is now requested by the holders of more than fifty of the bonds secured by the said mortgage deed to take

possession of all the said mortgaged property, and during such defaults to manage and control the same and to collect and receive all the tolls and income thereof, and that by reason of the said defaults your orator, as such trustee, has been and is now requested in writing by the holders of more than fifty of the said bonds to institute this his suit and to obtain herein the appointment of a receiver of all the said mortgaged premises and a foreclosure of the said mortgage deed.

And your orator further shows unto your honors that no proceedings at law for the recovery of the indebtedness aforesaid or any part thereof have been had or taken, nor have any of the holders of the said mortgage bonds, so far as your orator has any knowledge, taken or caused to be taken any proceedings for the recovery of the said indebtedness or any part thereof.

And your orator further shows unto your honors that the hereinafter-named defendants, as he is advised and believes, have or claim to have some interest in the said lines of railway and property or some part or parts thereof conveyed to your orator as aforesaid by the said St. Louis, Kansas City and Northern Railway Company, either as subsequent purchasers, incumbrancers, judgment creditors, or otherwise; but your orator charges the fact to be that their
267 interests and the interests of each of them, if any they have, in the said lines of railway and property or any part thereof have accrued subsequently to the lien of the said mortgage deed to your orator and are subordinate thereto.

Wherefore and inasmuch as your orator is remediless in the premises, according to the strict rules of common law, and can only have relief in a court of equity where matters of this nature are properly cognizable and reviewable—to the end, therefore, that the hereinafter-named defendants may, if they can, show why your orator should not have the relief hereby prayed and may full, true, direct, and perfect answers make, but not under oath, their answers under oath being hereby expressly waived, according to the statute in such case made and provided, to all and singular the premises as fully and as particularly as if the same were hereinafter repeated; that an account be had and taken of the bonds and coupon or interest notes secured by the said mortgage deed of the said St. Louis, Kansas City and Northern Railway Company and of the amounts due thereon; that the name of the lawful holders thereof may be ascertained; that an account be taken of all the mortgage security conveyed by the said mortgage deed, whether acquired before or after the execution and delivery thereof; that the said St. Louis, Kansas City and Northern Railway Company and the Wabash, St. Louis and Pacific Railway Company may severally and fully disclose what property and interests not hereinbefore sufficiently described or set forth are conveyed or affected by the said mortgage deed, and may be compelled to convey and transfer to your orator by way of further assurance such of the said property and interests as have not been specifically conveyed or transferred; that an account may be taken of all the liens and incumbrances upon all of your orator's said mortgage security, and the priorities thereof determined; that the

said mortgage deed of the said St. Louis, Kansas City and Northern Railway Company to your orator may be decreed to be a first lien upon all the lines of railway and property described therein
268 or thereby covenanted or agreed to be conveyed; that any and all receivers' certificates or obligations heretofore issued or to be issued with the view of making the said certificates or obligations a prior lien or charge upon the premises and property mortgaged to your orator may be declared void and of no effect; that the said defendants and each of them may be required to answer herein and to state and set forth their respective interests in the said mortgage security or any part thereof and the nature and extent of any such interests; that the said mortgaged property or security may be sold at a judicial sale thereof, free and clear from the claims of all the parties hereto and free and clear from the claims of all persons whose interests are in any manner represented by any of the parties hereto under the decree of this honorable court, and upon such terms and conditions as to this court shall seem proper; that each and all of the said defendants and all persons in like situation with them or any of them, and all persons claiming or to claim by, from, or under them or any of them, may, from and by the said sale, be absolutely barred and foreclosed of and from all right and equity of redemption of, in, or to your orator's said mortgage security or any part or parts thereof; that if the proceeds of such sale be insufficient to pay the costs of this proceeding and to pay and satisfy the amount due upon the said mortgage bonds and coupons or interest notes, the said St. Louis, Kansas City and Northern Railway Company and the Wabash, St. Louis and Pacific Railway Company may be adjudged to be liable and decreed to pay to your orator the amount of any deficiency which may remain; that pending this suit a receiver or receivers may be appointed in accordance with the terms and provisions of the said mortgage deed and the practice of this court, with all the customary powers of receivers in like cases, of all and singular the said mortgage security and every part thereof, and to preserve, operate, manage, and control the same and to otherwise discharge all the duties ordinarily imposed by courts of equity on the re-
269 ceivers of railway property by such courts appointed; that the said St. Louis, Kansas City and Northern Railway Company, the Wabash, St. Louis and Pacific Railway Company, and Solon Humphreys and Thomas E. Tutt, the receivers of the last-named railway company, and each of them, upon the appointment by your honors of the receiver or receivers herein, be directed and commanded to forthwith turn over, surrender, and yield possession of all engines, cars, rolling stock, machinery, equipments, or other property whatsoever appertaining, belonging, or incident to the lines of railway mortgaged to your orator; that an injunction may issue restraining the defendants and each of them from interfering with, transferring, selling, or disposing of any of the said mortgaged security and from taking possession of, levying upon, or attempting to sell the same or any part thereof.

And your orator prays such other and further relief as the nature

of its case may require and as shall seem to your honors consistent with equity and good conscience.

May it please your honors to grant unto your orator the writ of subpœna to be directed to the Wabash, St. Louis and Pacific Railway Company, the St. Louis, Kansas City and Northern Railway Company, the Central Trust Company of New York (a corporation created by and existing under the laws of the State of New York), James Cheney, a citizen and resident of the State of Indiana; the Mercantile Trust Company of New York (a corporation created by and existing under the laws of the State of New York); the St. Louis, Iron Mountain and Southern Railway Company (a corporation created by and existing under the laws of the State of Missouri); the Clarinda and St. Louis Railroad Company (a corporation created by and existing under the laws of the State of Iowa), and Solon Humphreys and Thomas E. Tutt, as receivers of the Wabash, St. Louis and Pacific Railway Company, who are severally hereby made parties defendant to this bill of complaint, therein and thereby commanding them and each of them, at a certain day and
270 under a certain penalty therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises and to stand to, abide, and perform such orders and decrees as to your honors shall seem meet.

GEORGE I. SENEY,
By STEWART & BOARDMAN,
His Solicitors.

THEODORE SHELDON, *Of Counsel.*

UNITED STATES OF AMERICA, }
State of New York, City and County of New York, } *ss:*

George I. Seney, being duly sworn, says that he is the complainant in the foregoing bill of complaint; that the said bill of complaint is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

GEO. I. SENEY.

Sworn to before me by the said George I. Seney and signed by him in my presence this 17th day of March, A. D. 1886.

WALDRON WILLIAMS,
[L. S.] *Notary Public, N. Y. Co.*

271 EXHIBIT A.

This deed, made and entered into this fifteenth day of July, A. D. 1879, by and between the St. Louis, Kansas City and Northern Railway Company, a corporation organized under the laws of the State of Missouri, party of the first part, and George I. Seney, of New York, party of the second part, witnesseth: That whereas the said St. Louis, Kansas City and Northern Railway Company has made and executed two hundred and sixty-four bonds, bearing date

on the first day of August, A. D. 1879, each for the sum of one thousand dollars, all of which are made payable to George I. Seney or bearer forty years after said date, for value received, at the National Bank of Commerce, in the city and State of New York, with interest from date at the rate of six per cent. per annum, payable semi-annually on the first days of August and February in each year on the presentation and surrender of the proper annexed coupons, the principal and interest of said bonds being payable in gold coin of the present weight and fineness as fixed by the laws of the United States now in force, and which bonds are also exempt from any income tax that now is or may be hereafter levied or provided for by any law of the United States; and whereas said St. Louis, Kansas City and Northern Railway Company is the owner of a branch line of railroad, commencing on the main line of its Omaha Division, at a point in Nodaway county, Missouri, on the east side of the Nodaway river, and extending in a northerly direction to the boundary line between the States of Missouri and Iowa; and whereas the Clarinda and St. Louis Railroad Company, a corporation organized under the laws of Iowa, is the owner of a line of railroad extending from the town of Clarinda, in the State of Iowa, in a southerly direction through the county of Page, in said State, to a point on said boundary line between the States aforesaid, at which point the lines of railroads aforesaid join, intersect, and connect with each other; and whereas the said Clarinda and St. Louis Railroad Company, by its certain agreement in writing, dated on the fifteenth day of July,
272 A. D. 1879, for certain good and valuable considerations therein expressed, has leased, demised, and let unto the St. Louis, Kansas City and Northern Railway Company, its successors and assigns, free from all liens and incumbrances of every kind whatsoever, for the full term of ninety-one years from and after the date of said agreement, the entire line of its said railroad as the same now is or may be hereafter constructed, maintained, operated, or acquired, with all the real estate, right of way, depots, depot grounds, side tracks, engines, cars, and other appurtenances thereunto belonging, together with the right, privilege, and franchise of maintaining and operating said railroad and regulating, fixing, collecting, and receiving all freight, tolls, and charges for the use thereof or for the transportation of freight, passengers, and property upon or over the same; and whereas the lines of railroad aforesaid will, when completed, constitute and form one continuous line of railway, commencing on the main line of the Omaha Division of the St. Louis, Kansas City and Northern railway at a point on the east side of the Nodaway river, in Nodaway county, Missouri, and extending from thence in a northerly direction to the town of Clarinda, in the county of Page, in the State of Iowa, which said continuous line is designated upon said bonds and is to be hereafter known as the Clarinda Branch of the St. Louis, Kansas City and Northern railway; and whereas the St. Louis, Kansas City and Northern Railway Company, for the purpose of obtaining the necessary funds with which to construct and equip said Clarinda Branch of its railroad, has issued its bonds aforesaid at the rate of twelve

thousand dollars per mile for each and every mile of the railroad aforesaid in the States of Missouri and Iowa: Now, therefore, to secure the prompt payment of the principal and interest of the bonds herein described and hereby secured, and for the further consideration of one dollar to it, the said St. Louis, Kansas City and Northern Railway Company, paid by the said George I. Seney, the
273 receipt of which is hereby acknowledged, the said St. Louis, Kansas City and Northern Railway Company has given, granted, bargained, sold, assigned, conveyed, and confirmed, and by these presents does give, grant, bargain, sell, assign, convey, and confirm, unto the said George I. Seney, of New York, his successor, successors, and assigns in this trust, forever all and every part and parcel of the continuous line of railroad aforesaid and all right, title, and interest therein as now owned, leased, or held by the said St. Louis, Kansas City and Northern Railway Company, commencing on the main line of the Omaha Division of the St. Louis, Kansas City and Northern Railway Company at said point on the east side of the Nodaway river, in Nodaway county, Missouri, and extending from thence in a northerly direction to the town of Clarinda, in the county of Page, in the State of Iowa, as said railroad now is or may be hereafter constructed, maintained, operated, or acquired, together with all the privileges, rights, franchises, real estate, right of way, depots, depot grounds, side tracks, water-tanks, engines, cars, and other appurtenances thereunto belonging. This conveyance is made in trust, however, for the following purposes, to wit: If the principal of said bonds and the several installments of interest thereon be duly paid as the same becomes due, then this deed shall be void and the property hereby conveyed shall be released at the cost of said St. Louis, Kansas City and Northern Railway Company; but if the principal of said bonds or any part thereof shall not be paid by said railway company when the same becomes due, or if any installment of interest upon said bonds or any part thereof shall not be paid within sixty days after the same becomes due and payment thereof shall have been demanded at the place of payment, then the principal of the bonds hereby secured shall become due and payable, and the said George I. Seney or his successor, successors, or assigns in this trust shall, whenever requested so to do by the holder or holders of fifty or
274 more of the bonds hereby secured, take possession of all of said mortgaged property, and during such default he shall manage and control the same and collect and receive all the tolls and income thereof, and upon demand in writing of the holder or holders of fifty or more of said bonds the said George I. Seney or his successor, successors, or assigns in this trust shall proceed to foreclose this mortgage and sell the property herein and hereby conveyed at the city of St. Louis at public auction to the highest bidder for cash, after having first given twenty days' public notice of the time, terms, and place of sale by advertisement in at least one daily newspaper published in the city of St. Louis and one daily newspaper published in the city of New York, and upon making such sale said George I. Seney or his successor, suc-

cessors, or assigns in this trust shall execute to the purchaser or purchasers thereof an absolute deed to the property hereby conveyed, and he, the said George I. Seney, his successor, successors, or assigns in this trust, shall receive the net proceeds of such sale and apply the same as follows, to wit:

First. To the payment of the costs and expenses of this trust, including the commission or compensation of the trustee.

Second. To the payment of the principal of said bonds and the interest thereon to the day of sale; and in case the proceeds of said sale are not sufficient to pay the whole of said principal and interest to the day of sale, then said trustee shall apportion the same *pro rata* among the holders of said bonds; and, third, if after paying all of said bonds and the interest thereon to the day of sale there shall remain a surplus said trustee shall pay the same to the St. Louis, Kansas City and Northern Railway Company, its successors or assigns, but it is hereby expressly understood and agreed by and between the parties hereto that the purchaser or purchasers of that portion of said railroad and other property situated in the
275 State of Iowa and hereby conveyed shall not be bound by any of the covenants or agreements contained in the lease of the Clarinda and St. Louis Railroad Company of its railroad and appurtenances aforesaid to the St. Louis, Kansas City and Northern Railway Company, unless he or they shall elect in writing to be bound by the covenants contained in said lease; and whereas it is provided in the bonds hereinbefore described and hereby secured that said bonds shall pass by delivery or by transfer on the books of the St. Louis, Kansas City and Northern Railway Company, in the city of New York, and that after a registration of the ownership of said bonds, certified thereon by the transfer agent of said railway company, no transfer of said bonds, except upon the transfer books of said company, shall be valid unless the last transfer shall be to bearer, which transfer to bearer shall again render said bonds transferable by delivery, and that said bonds shall continue subject to successive registration and transfer to bearer as aforesaid at the option of each successive holders, provided the coupons issued with the same and not due are attached to said bonds when such registration is desired, and not otherwise.

Now, it is agreed by and between the parties hereto that the St. Louis, Kansas City and Northern Railway Company or its successor, successors, or assigns will keep in its office in the city of New York the necessary books in which the registration and transfer of said bonds may be made as therein provided for, and said company shall from time to time appoint a transfer agent in said city of New York, and such transfer agent shall sign all certificates of registration and transfer provided for herein or in the bonds aforesaid, and said St. Louis, Kansas City and Northern Railway Company, for itself and its successors and assigns, hereby covenants and agrees that in case of default in the payment of the principal of said bonds or any installment of interest thereon it will at once, upon demand, deliver possession of the railroad and other

property hereby conveyed to the trustee herein named
276 or to his successor, successors, or assigns; but it is further expressly understood and agreed by and between the parties hereto that said St. Louis, Kansas City and Northern Railway Company, its successors or assigns, shall, until such time as default is made in the payment of the interest or principal of said bonds, be entitled to have and to hold the possession of said railroad, with all its appurtenances, and it shall also be entitled to collect, receive, and retain all revenue arising for the use thereof. The said St. Louis, Kansas City and Northern Railway Company hereby further agrees for itself, its successors and assigns, that it will from time to time pay all the expenses of this trust, including the compensation and expenses of the transfer agent herein provided for; and the said George I. Seney, of New York, party of the second part, hereby accepts this conveyance and covenants to perform the trust hereby vested in him according to the terms of this deed. In case a vacancy shall occur in this trust from any cause whatever, then a new trustee or trustees may be appointed by any court of competent jurisdiction upon the application of the holder or holders of fifty or more of the bonds hereby secured, and such court may, by its order or decree, vest in such new trustee or trustees so appointed all the authority, estate, and powers possessed under this instrument by said George I. Seney. It is hereby further agreed that nothing herein contained shall be held or construed to prevent or interfere with a foreclosure of this instrument, the appointment of a receiver, or any other act or proceeding appropriate or customary in such cases by any court of competent jurisdiction; and it is also agreed as aforesaid that after default in the payment of interest or principal of any of the bonds hereby secured, and when such default shall have continued for a space of sixty days after demand as hereinbefore set forth, then the party of the second part, his successor,
successors, and assigns in this trust, in any suit, action, or
277 proceeding instituted at the request of the holder or holders of fifty or more of the bonds hereby secured, shall be entitled as a matter of right to the appointment by any court of competent jurisdiction of a receiver of the railroad, rolling stock, and all property and estate conveyed by this instrument, and such receiver shall have all the powers and rights usually possessed by receivers in similar cases. It is further understood and agreed by and between the parties hereto that the purchase price of the bonds secured by this mortgage is to be received by and paid to the said George I. Seney, his successor, successors, or assigns in this trust, and, until the final completion of the railroad hereby mortgaged and conveyed, the proceeds arising from the sale of said bonds shall only be paid by said trustee to the party of the first part, its successors or assigns, in installments of fifty thousand dollars, and with the exception of the first installment the same shall be paid only on the deposit with such trustee of a certificate of the president of said railroad company and the chief engineer in charge of the construction of the line of railroad hereby mortgaged that the previous installment has been expended exclusively in the construction or equip-

ment of said line of railroad or in the purchase of material for the construction thereof; and it is hereby further mutually covenanted and agreed by and between the parties of this instrument that the said party of the second part, his successor, successors, or assigns in this trust, shall be accountable only for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent or servant employed by him or them when such agent or servant shall have been employed with reasonable discretion.

In testimony whereof the said St. Louis, Kansas City and Northern Railway Company has caused its seal to be hereunto affixed and these presents to be subscribed by its president and secretary, at St. Louis, Missouri, on this the fifteenth day of July, A. D. one thousand eight hundred and seventy-nine.

And the said George I. Seney, trustee herein, has also
278 signed these presents and attached his seal hereto in signification of his acceptance of the trust herein created.

ST. LOUIS, KANSAS CITY AND NORTHERN RAILWAY COMPANY,
By B. W. LEWIS, JR., *President.*
Attest: JAMES F. HOW,
[SEAL.] *Secretary.*

GEORGE I. SENEY. [SEAL.]

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Be it remembered that on this twenty-first day of July, A. D. 1879, before me, the undersigned, a notary public within and for the city and county of St. Louis and State of Missouri, came B. W. Lewis, Jr., president, and James F. How, secretary, of the St. Louis, Kansas City and Northern Railway Company, who is [are] personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and they acknowledged the same to be the act and deed of the said company, by them as president and secretary of said St. Louis, Kansas City and Northern Railway Company, party thereto, and that they affixed the seal of said corporation thereunto by authority of said company, and severally acknowledged that they executed the same as the act and deed of said corporation for the purposes therein mentioned, and that the seal so affixed is the corporate seal of said company; and I further certify that I was qualified as notary public aforesaid on the 13th day of March, A. D. 1876, and that my official term expires on the 9th day of March, A. D. 1882.

In testimony whereof I have hereunto set my hand and affixed my official seal this the 21st day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

GEORGE S. GROVER,
[SEAL.] *Notary Public.*

279 STATE OF NEW YORK, } ss:
City and County of New York, }

ST. LOUIS CITY AND COUNTY.

Be it known that on the fifteenth day of July, in the year one thousand eight hundred and seventy-nine, before me, the undersigned, a notary public for the city and county of New York and State aforesaid, appeared George I. Seney, who is to me personally known to be the person who executed the foregoing instrument, and acknowledged that he executed and delivered the same freely and voluntarily for the uses and purposes therein expressed.

Witness my hand and notarial seal on this fifteenth day
[SEAL.] of July, in the year one thousand eight hundred and seventy-nine.

W. H. CONNELL,
Notary Public, N. Y. Co.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Hubert O. Thompson, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that W. H. Connell, whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument and thereon written, was, at the time of taking such proof and acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgement is genuine. I further certify that
280 said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court and county the 15th day of July, 1879.

HUBERT O. THOMPSON, *Clerk.*

STATE OF IOWA, } ss:
Page County, }

I, Thos. C. Beard, register of deeds for Page county, Iowa, hereby certify that the foregoing is a full, true, and exact copy of a mortgage or deed of trust recorded in Book 27 at page 393 of the Mortgage Records of this county.

Witness my hand, at Clarinda, Ia., this 20th day of February, A. D. 1886.

T. C. BEARD,
Register of Deeds.

281 On April 6th, 1886, upon the hearing of the petition last above named the judges of said court entered the following order:

In the Circuit Court of the United States for the Eastern District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants, *vs.* THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants.	In Equity. Nos. 2357 and 2464, Consolidated Cause.

Order on Receivers to Transfer the Clarinda Branch of the St. Louis, Kansas City and Northern Railway to George I. Seney, as Trustee.

APRIL 6TH, 1886.

Now on this day comes George I. Seney, as trustee, by his solicitors, and represents to the court that he is the trustee under a certain mortgage or deed of trust executed by the St. Louis, Kansas City and Northern Railway Company on July 15th, 1879, to secure certain bonds, commonly known as "Clarinda Branch bonds," of which there are now outstanding $264,000, said bonds bearing interest at the rate of six per cent. per annum, payable semi-annually; that said railway company and its successor, the Wabash, St. Louis and Pacific Railway Company, defaulted in the payment of the interest falling due upon said bonds on February 1st, 1885,
282 and a like instalment falling due August 1st, 1885, and another like instalment falling due February 1st, 1886, and that such defaults continue, no interest upon said bonds having been paid since August 1st, 1884; that said mortgage embraces and covers a line of railroad of the said Wabash, St. Louis and Pacific Railway Company extending from the east side of the Nodaway river, in the county of Nodaway and State of Missouri, to the town of Clarinda, in the county of Page and State of Iowa, said railroad being of the length of about twenty-one miles.

And the said George I. Seney, as trustee, having prayed the court for an order directing the receivers to surrender to him, as such trustee as aforesaid, the possession and control of the said railroad and property embraced in and covered and conveyed by the said mortgage, with leave to institute in the State courts proper actions for the foreclosure of the said mortgage, and to cause the same to be removed into the Federal courts, and the appointment therein of a separate receiver for the management and operation of the said railroad, as provided in said mortgage; and the receivers appointed by this court, the Central Trust Company of New York and James Cheney, trustees, and all other persons and parties interested in said motion being represented in open court by their several solicitors and being duly advised of the said motion, and the court having fully considered said motion and being advised in the premises, it is now hereby ordered that the said receivers do, within ten

days from and after the filing of this order, transfer to Thomas McKissock, receiver over the Omaha Division of the Wabash, St. Louis and Pacific railway, the entire line of railroad hereinbefore described and known as the Clarinda Branch of the Wabash, St. Louis and Pacific railway; and also all the property, real and personal, pertaining to said branch and now in their possession
283 and control: Provided, that inasmuch as the rolling stock and equipment claimed to be covered by and conveyed by the said mortgage has been used indiscriminately with the rolling stock and equipment belonging to other branches of the railway, and inasmuch as an equitable apportionment of rolling stock and equipment will be made as hereinafter provided, it is further ordered that, for the time being and until final distribution and apportionment of rolling stock and equipment is made to said Clarinda Branch, the receivers shall, until otherwise ordered, permit said Thomas McKissock, receiver, to have the use of such rolling stock and equipment in kind and amount as has been needed in the business of the said Clarinda Branch during the three months last past.

It is further ordered that the matter of the division and equitable apportionment of the rolling stock and equipment between said Clarinda Branch and said Wabash, St. Louis and Pacific Railway Company be, and the same is hereby, submitted to the circuit court of the United States for the southern district of Iowa for adjudication and settlement by decree.

The surrender and transfer of the property under this order shall not be held to divest this court of jurisdiction of said property in this cause, but the same shall continue to be subject to such jurisdiction until the further order of this court; and, upon due notice by order of this court, the said trustee shall hereafter appear in court in response to any demand or requirement that shall be ordered by the court; this clause of this order to be and remain in force until the further order of this court.

This order shall in no manner prejudice or curtail the right of the said trustee, George I. Seney, to prosecute to final fore-
284 closure, decree, and sale his proper action or actions for the foreclosure of the said mortgage. He shall also have the right to except to any orders made by this court in this cause concerning him or the said Clarinda Branch covered and conveyed by the said mortgage.

And it is further ordered that the receivers appear in any action or actions in which they are this day authorized to be sued in the United States courts in Iowa and Missouri, respectively, by the said George I. Seney for the foreclosure of the said mortgage and present for final adjudication any demand they may have as such receivers against said property known as the Clarinda Branch for operating or other expenses, and also as to the portion, if any, of receivers' certificates issued under the orders of this court for which said property may be justly chargeable in law or equity, and that in said actions in said circuit courts of the United States the said receivers answer and litigate to final adjudication any and all claims made against them and in favor of said Clarinda Branch in respect to the

credits allowed to said branch by said receivers and any and all claims and questions pertaining to a full, equitable, and final settlement between said Clarinda Branch as a separate and severed road and the said Wabash, St. Louis and Pacific Railway Company.

It is further ordered that if it shall be finally determined by the circuit court of the United States for the southern district of Iowa that no rolling stock is included in or covered by said mortgage, or in case more shall be used on said line than shall be finally allotted to it, then said line shall be charged with such sum or sums as will be a reasonable compensation for the use of the rolling stock so employed.

285 In pursuance of the terms of this order the receivers, on April 16th, 1886, surrendered the Clarinda Branch, as required by the terms of the last-named order.

On the 26th day of April, 1886, the railroads and property directed to be sold by said decree and supplemental decree foreclosing said general mortgage were offered for sale by said commissioner, and said Joy, Ashley, Hubbard, and Welles, trustees, became the purchasers of said railroads and property covered by said general mortgage for the price and sum of $625,000.00, subject to the terms and conditions of said decree of foreclosure and sale.

Report of the sale was filed by said commissioner on the 28th day of April, 1886, and an order of confirmation was made by the court on the 15th day of June, 1886.

By said order of confirmation said commissioner was ordered to execute to the purchasers at said sale (including said Joy *et al.*, trustees) the proper deed or deeds of conveyance, in accordance with said decree of sale, of all and singular the premises, property, and franchises purchased upon compliance by them with the conditions contained in said order of confirmation and subject to the terms and conditions of said decree of sale.

Said commissioner, on the 20th day of September, 1886, filed in said consolidated cause his report, setting forth that said Joy *et al.*, trustees, had fully complied with the terms of said order of confirmation and had paid over to said commissioner the sum of $625,000.00, by them bid for the property by them purchased as aforesaid. With said report said commissioner filed forms of deeds to be by him executed to the purchasers at said sale.

On the 21st day of September, 1886, said last-mentioned report came on to be heard before the court and was confirmed, and said commissioner was ordered and directed to execute and deliver

286 to said purchasing committee the proper deeds to the property by said committee purchased as aforesaid. The forms of deeds filed by said commissioner were approved.

The Central Trust Company of New York and James Cheney, as trustees of said general mortgage, the Mercantile Trust Company, as trustee of the collateral trust mortgage, said Wabash, St. Louis & Pacific Railway Company and Solon Humphreys and James F. How, trustees of certain real estate, were also by said last-mentioned order directed to severally and in due form convey to said purchasers all

their interest as trustees and as mortgagors in and to the property sold by said commissioner to said purchasers.

The deeds and conveyances as aforesaid ordered to be made, executed, and delivered by said commissioner to the Central Trust Company and Cheney, to the Mercantile Trust Company, to the Wabash Railway Company, Humphreys and How, to said purchasers (including said purchasing committee), have been duly made, executed, and delivered as ordered and directed.

Possession of the property was not delivered to the purchasers when said deeds were executed and delivered.

On the 31st day of December, 1886, the following order was made in said cause by said court:

287 At a stated term of the circuit court of the United States for the eastern district of Missouri, held at the court-house, in the city of St. Louis, on the 31st day of December, 1886.

Present: The Honorable David J. Brewer and the Honorable Samuel Treat, judges.

THE CENTRAL TRUST COMPANY OF NEW YORK and JAMES CHENEY, Complainants, *vs.* THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.	In Equity. Nos. 2357 and 2464, Consolidated Cause.

Order of Court Concerning Possession of Property under Decree of January 6th, 1886.

DECEMBER 31ST, 1886.

And now come James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar P. Wells and submit their petition, praying that the court will direct that all the property purchased by them as a committee representing certain bondholders be turned over and be delivered to them, and submit also an order proposed in connection with said petition, and the court, having considered the same, does refuse to make the order so submitted; and thereupon the
288 court, of its own motion, does order, adjudge, and decree that the said purchasers as a committee as aforesaid shall, within sixty days from the entry of this order, pay into the registry of this court the sum of one million dollars in cash or in certificates, now outstanding, of Solon Humphreys and Thomas E. Tutt, receivers, and shall also, within the same period, as such committee, give bond or security, to be approved by this court, in the sum of one million dollars, conditioned to pay the full amount of the said receivers' indebtedness and other demands stated in the final decree herein, and to comply with all the further orders of this court; that such payment shall be made and security given by said purchasers in their capacity as a committee and as agents, and not as individuals, and shall be made and given by the use of the moneys or means in their possession or control as such committee.

And the court doth further order and decree, upon making the payment and giving the security hereinbefore ordered, the said pur-

chasers as such committee shall take and the said receivers shall deliver to them possession of the entire property purchased by them under the decree of foreclosure entered in this cause January 6th, 1886, and that such possession shall be subject to the right of this court to retake possession of said property or any part thereof on failure of said purchasers or their successors to comply with any further order of this court, and shall also be subject to all the terms and provisions of the said decree and of the order of this court heretofore made confirming the sale of said property under said decree.

DAVID J. BREWER,
Circuit Judge.
SAMUEL TREAT,
U. S. District Judge.

On the 30th day of March, 1887, the following order was made in said cause by said court:

289 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants, *vs.* WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.	Nos. 2357 and 2464, Consolidated Cause. In Equity.

Order on Receivers to Turn Property Over to Purchasing Committee.

MARCH 30TH, 1887.

Now, on the 30th day of March, 1887, this cause coming on for further hearing and the receivers herein appearing, by their counsel, and the purchasing committee hereinafter mentioned appearing, by their counsel, and applying to the court for possession of the property heretofore purchased by them, and it appearing to the court from a

290 report of the special master filed herein on the 5th day of March, 1887, that said purchasing committee, composed of the parties mentioned in the order entered in this cause by the court of its own motion on the 31st day of December, 1886, did, within sixty days from the date of said order and in pursuance thereof, pay into the registry of this court the sum of one million dollars in cash, and the certificates of Solon Humphreys and Thomas E. Tutt, receivers; and the court having on the 28th day of February, 1887, by an order duly entered herein, among other things, directed that the giving of a bond or security by said committee, as required by said order of December 31st, 1886, be postponed without

RECITAL.—One million dollars already paid under order of December 31, 1886.

A further sum of $250,000, paid March 27, 1887.

prejudice to the rights of said purchasers; and it further appearing to the court that said purchasing committee did, on the 27th of March, 1887, deposit to the credit of said receivers, Humphreys and Tutt, in the National Bank of Commerce in the city of New York a further sum of two hundred and fifty thousand dollars in cash, to be used by said receivers in paying their certificates due prior to April 1st, 1887, at par and accrued interest: Now, in consideration of the premises, it is ordered, adjudged, and decreed by the court—

Bond to be given in sum of $750,000.

First. That said purchasing committee as such file their bond herein, conditioned that they will, from moneys now in their hands as such committee (and not from the earnings of the railroads purchased by them), pay into the registry of this court or place to the credit of said receivers in some bank to be designated by said receivers the further sum of seven hundred and fifty thousand dollars ($750,000), to be used as the same may from time to time be required by said receivers to pay their own obligations or such obligations of said Wabash, St. Louis, and Pacific Railway Company as said receivers have been heretofore ordered or may be hereafter ordered to pay by the court.

Second. And in order to carry into effect the provisions of the foreclosure decree entered
291 herein on or about January 6th, 1886, and of the order or decree entered herein on or about June 15th, 1886, confirming the report of sale of certain property therein described to said purchasing committee, in which decrees it was, among other things, provided that said purchasing committee should, as a condition of their said purchase, pay such sums of money as might be needed and as this court or the other courts exercising ancillary jurisdiction in this cause might direct them to pay in order to meet claims which this court or said other courts might adjudge to be prior in equity to the mortgage foreclosed—

Further sums to be deposited as required to pay receivers' indebtedness.

It is further ordered, adjudged, and decreed that said purchasing committee or their successors or assigns from time to time pay into the registry of this court or deposit in some bank in the city of St. Louis to the credit of said receivers such other and further sums of money in addition to said seven hundred and fifty thousand dollars as may be required and as the same may be required to pay all debts and liabilities of every kind contracted or incurred by said receivers in preserving, maintaining, improving, or operating the

railroads and properties in their charge or incurred by said Wabash, St. Louis and Pacific Railway Company in maintaining and operating said railroads, and which debts and liabilities said receivers have been heretofore ordered or may be hereafter ordered to pay by this court or any of the other courts exercising ancillary jurisdiction in this cause.

Committee to take possession April 1, 1887, of all lines purchased.

Third. It is further ordered, adjudged, and decreed that on the first day of April, 1887, said purchasing committee take possession of all the railroads and other property purchased by them under said foreclosure decree wheresoever situated, and said receivers are hereby ordered and directed to deliver to said purchasing committee or its assigns on the day last aforesaid all the railroads and other property of said Wabash, St. Louis and Pacific Railway Company, wheresoever situated, purchased by said committee, whereof they
292 took possession as receivers and which now remain in their possession or under their control.

Receivers to deliver to committee all lines in their possession purchased under decree.

Fourth. And it further appearing to the court from the record of proceedings in this cause that the "general mortgage" of the Wabash, St. Louis and Pacific Railway Company or other mortgages given by corporations, parties to this suit, to the Central Trust Company of New York and James Cheney, trustees, to secure said general mortgage bonds are the only mortgage liens on certain railroads and their appurtenances hereinafter described, and which are now in the possession of said receivers or under the control of this court or the other courts exercising ancillary jurisdiction in this cause; and it further appearing from the record and proceedings in this cause that the title and interests of said Wabash, St. Louis and Pacific Railway Company in said railroads were offered for sale under the foreclosure decree herein, but that the same were not sold for want of bidders, to wit: The St. Louis, Jerseyville & Springfield railroad, extending from Bates to Grafton, in the State of Illinois; the Champaign & Southeastern railroad, extending from Champaign to Sidney, in the State of Illinois; the Attica, Covington & Southern railroad, extending from Attica to Covington, in the State of Indiana; the Des Moines & St. Louis railroad, extending from Albia to Des Moines, in the State of Iowa; and it further appearing to the court from the record and proceedings in said cause that there is also in the

Mortgages given to secure general mortgage bonds—first liens on certain lines.

Lines last mentioned not sold for want of bidders.

Mortgage given to secure general mortgage bonds—a first lien on Des Moines Northwestern.

possession of said receivers a line of railroad known as the Des Moines Northwestern railroad, extending from Des Moines, Iowa, to Fonda, in said State, and that the only mortgage lien thereon is a mortgage executed on or about the 28th day of February, 1881, by the Des Moines Northwestern Railway Company to the Central Trust Company of New York and James Cheney, trustees, to secure such of said general mortgage bonds of the Wabash, St. Louis and Pacific Railway Company as might be actually issued for the construction of such railroad, but that no title or interest of said Wabash, St. Louis and Pacific Railway Company in or to said railroad was sold or offered for sale under said foreclosure decree; and it further appearing to the court from the agreement under which said purchasing committee was formed, as said agreement is set forth in the report of Special Master Edmund T. Allen, filed herein on or about the 29th day of December, 1885, being the same agreement referred to in said foreclosure decree, that said purchasing committee are the representatives and agents of all the owners and holders of said general mortgage bonds—

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Des Moines Northwestern not offered for sale under decree.

Purchasing com. are agents and representatives of the owners and holders of all the general mortgage bonds.

Committee to take possession of all lines not purchased on which mortgages given to secure general mortgage bonds are first liens.

It is therefore further ordered, adjudged, and decreed that said committee on the day aforesaid take possession of all the aforesaid lines of railroad on which mortgages given to secure said general mortgage bonds are a first lien, to wit, the St. Louis, Jerseyville and Springfield railroad; the Champaign and Southeastern railroad; the Attica, Covington and Southern railroad; the Des Moines and St. Louis railroad, and the Des Moines Northwestern railroad, and said receivers are hereby ordered and directed to deliver to said purchasing committee on said day all the railroads last aforesaid and their appurtenances, but the delivery of said railroads and their appurtenances to said purchasing committee is made subject to the right hereby reserved to this court and to the other courts exercising ancillary jurisdiction in this cause to retake and, if necessary, to resell them, as is provided in said foreclosure decree with respect to retaking and reselling the railroads and property purchased thereunder in case said committee or their assigns shall fail or refuse to pay the debts and liabilities of said receivers or of said Wabash, St. Louis and Pacific Railway Company which said courts or either of them have adjudged or may adjudge to be liens or charges upon said properties or any of them

Lines last mentioned may be retaken and resold if receivers' debts are not paid.

superior to the mortgages given to secure said general mortgage bonds.

294 Fifth. And it further appearing to the court from the record and proceedings in this cause that said receivers are now in possession of the Eel River railroad, extending from Logansport to Butler, in the State of Indiana, and that said railroad was held by said Wabash, St. Louis & Pacific Railway Company under a lease executed by the Eel River Railroad Company to the Wabash Railway Company on or about the 26th day of August, 1879; and it further appearing to the court that the leasehold interest of the Wabash, St. Louis and Pacific Railway Company in said Eel River railroad was offered for sale under the foreclosure decree aforesaid and that the same was not sold for want of bidders—

Eel River railroad not sold.

It is therefore further ordered, adjudged, and decreed that the possession of said Eel River railroad and its appurtenances be tendered to said purchasing committee on said first day of April, 1887; and that in case said committee declines to accept possession thereof, then that said receivers forthwith surrender the same to said Eel River Railroad Company.

Eel River railroad to be tendered to purchasing com.

Sixth. For the purpose of enabling said receivers to make final settlement of their accounts and doings in the management of said property it is further ordered, adjudged, and decreed that, until otherwise directed, they retain in their custody all books of account, papers, and documents now in their possession which relate to the operation or management of the property in their charge or the earnings or expenses thereof or that pertain to the funds collected and disbursed by them or which relate to the business of said Wabash, St. Louis and Pacific Railway Company prior to said receivership, and which books, accounts, papers, and documents it may be necessary or convenient for them to have in order to adjust and settle their own accounts or accounts and claims against said company or its property which said receivers have been ordered or may be hereafter ordered

295 to pay by this court or any other court exercising ancillary jurisdiction in this cause, and said receivers will, until their final settlement and discharge, continue as heretofore to adjust their said accounts and the aforesaid accounts of said company, and they will, from funds which may come into their possession under the provisions of this or any other order or decree, pay said

Receivers to retain books and papers.

Receivers to continue to adjust and pay their accounts.

accounts and claims as they severally become due and payable.

All moneys in hands of receivers and all earnings of property prior to April 1, 1887, to be used in paying indebtedness.

It is further ordered, adjudged, and decreed that all the revenues of said property earned prior to said first day of April, 1887, be, as far as practicable, collected by said purchasers or their assigns and paid over to said receivers, and that all such funds, as well as all funds in the hands of said receivers or subject to their control on said first day of April, 1887, be used by said receivers in paying said indebtedness; and

Funds and certificates in registry of court to be delivered to receivers.

It is further ordered, adjudged, and decreed that all funds and receivers' certificates now in the registry of this court be forthwith delivered to said receivers, and that said funds be also used by them for the purposes last aforesaid.

Unjust claims may be litigated by purchasers.

Seventh. It is further ordered, adjudged, and decreed that if any claim shall be made or presented against said receivers which they may deem unauthorized, illegal, or unjust they shall forthwith notify said purchasing committee or its assigns thereof, and thereupon said committee or its assigns may without any further order or authority from this court litigate and defend against such claims, but all the expenses of said litigation shall be paid by said committee or its assigns, and in case any claims shall be presented against said receivers with respect to the legality or justice of which they are in doubt they may pay the same with the approval of said committee or its assigns.

Doubtful claims may be paid by receivers with approval of purchasers.

Court reserves the right to make all further orders necessary to enforce decree.

Eighth. This court reserves unto itself the right to make all such other and further orders concerning the custody of the property taken possession of by said purchasing committee under this order and with respect to the payment of such other and further sums of money by said committee or its assigns as may be deemed necessary to carry into effect the provisions of said foreclosure decree, and said receivers may from time to time apply to this court for such other and further orders and instructions as they may deem necessary.

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Receivers may apply for further orders.

Nothing in this order contained or in bond of committee to be construed as affecting former decrees and orders.

Ninth. Nothing in this order contained is intended to modify or shall be construed as modifying or revoking anything contained in the decree of foreclosure entered herein on or about January 6th, 1886, or as modifying or revoking anything contained in the order entered herein on or about the 15th day of June, 1886, confirming the sale to said purchasing committee of portions of the property described in said foreclosure decree, but the

provisions of this order and of the bond herein mentioned and required of said purchasing committee are intended to be in addition to the several matters and things contained in the decrees and orders aforesaid.

Mercantile Trust Company to deliver to committee property in its possession.

Tenth. On presentation of a copy of this order to the Mercantile Trust Company of New York, with an indorsement thereon under the hand of the clerk and the seal of this court to the effect that the bond of said purchasing committee as herein required has been filed and approved, said Mercantile Trust Company of New York shall deliver to said purchasing committee all the property purchased by them under said foreclosure decree now in possession of said trust company.

Receivers to give notice that claims not presented within four months will be barred.

Eleventh. For the purpose of enabling said receivers to make final settlement of their accounts at an early day, it is further ordered, adjudged, and decreed that they cause to be printed for thirty days in at least one newspaper published in some town or city on the line of the railroad in each of the States in which the railroads
297 taken possession of by them as receivers are situated a notice, addressed to all persons having claims against them as receivers or against said Wabash, St. Louis and Pacific Railway Company of a class which they as receivers have been ordered to pay, setting forth that all such claims not presented to and approved by said receivers or presented to this court for adjudication or allowance within four months after the first publication of said notices will be forever barred as claims against them and the funds of said receivership, and that such parties will thenceforth stand remitted to such rights as they may have against the property described in said foreclosure decree.

(Signed) DAVID J. BREWER,
Circuit Judge.

298 In pursuance of the order of March 30th, 1887, above mentioned, the purchasers entered into possession of said property and filed their bond in the sum of $750,000.00, and have since paid the full amount of said bond according to its terms.

Upon receipt by them of said railroad property the said purchasing committee transferred, assigned, and conveyed the same to the Wabash Western Railway Company, a corporation created by the laws of the State of Missouri, for the purpose of owning and operating the property purchased at the sale in this cause; which said railway company at the date of the appeal herein holds title to and is in possession of all the aforesaid property.

On April 14th, 1888, the judges of said court entered the following matter concerning the transfer of the assets and accounts of the receivers to said Wabash Western Railway Company:

299 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants, *vs.* THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.	In Chancery. Nos. 2357 and 2464, Consolidated.

Order in the matter of the transfer of the assets and accounts of the receivers to the Wabash Western Railway Company fixing the compensation of the Central Trust Company for services, fixing the compensation of Thomas E. Tutt for special services under the order of May 31st, 1884, and compensation of Special Master E. T. Allen, and overruling exceptions of James H. Britton, trustee, and of United States Trust Company to master's report, filed June 11th, 1887.

APRIL 14, 1888.

Upon the report of the special master, filed herein April 12th, 1888, the following orders are entered in said cause, to wit:

First. It is ordered that whenever the Wabash Western
300 Railway Company shall have complied with the terms and conditions of this order, as hereinafter stated, the receivers herein assign and transfer to said railway company all assets, uncollected accounts, and choses in action of the Wabash, St. Louis & Pacific Railway Company remaining in their hands; also all the assets, uncollected accounts, and choses in action remaining in their hands and which have accrued to them, as such receivers, from the operation of the railway property lately in their charge; that as soon as may be, after such assignment and transfer, said receivers file in the clerk's office a complete report of their receipts and disbursements as such receivers since the date of their last quarterly report and of their action under this order.

2. The transfer and assignment mentioned in the first paragraph of this order shall be made when the Wabash Western Railway Company shall have entered its appearance in this cause, and, in consideration of such transfer and assignment and pursuant to the terms and conditions of the decree of sale herein of date January 6th, 1886, and the order confirming said sale of date June 15, 1886, and the terms and conditions of the deed by which said railway company acquired from James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, the purchasing committee, a part of the property described in said decree of sale by stipulation under its corporate seal, shall have assumed and agreed to pay all the claims and demands imposed upon the purchasers under said decree and said order confirming the same and upon their assigns; also all claims and demands against the Wabash, St. Louis & Pacific

Railway Company which have been or may be adjudged to be superior in equity to the mortgages foreclosed by said decree and which were not barred by the order of this court entered herein on the 28th day of February, 1888; also all claims and demands growing out of the operation by said receivers of the railway property lately in their charge which have been or may be adjudged to be superior in equity to the mortgages foreclosed by said decree and which were not barred by said order of date February 28th,
301 1888; also all court costs and allowances as costs in this cause of this court and of the other courts entertaining ancillary jurisdiction of this cause remaining unpaid and which said railway company may be directed to pay and shall have further agreed to file accounts in the clerk's office of this court from time to time, as the court shall direct, of its receipts and disbursements in respect of the assets and claims and demands aforesaid.

3. Nothing in this order contained is intended to modify or shall be construed as modifying anything contained in said decree of date January 6th, 1886, or in said order of June 15th, 1886, confirming the sale under said decree; but the provisions of this order are for the purpose of enabling said receivers to make final settlement of their accounts, and to that end, so far as relates to the assets in their hands, to place them in the control of the Wabash Western Railway Company, to be administered precisely as the receivers would have administered those assets if this order had not been made.

Second. It is ordered that Special Master Edmund T. Allen pay to the Central Trust Company of New York, from the moneys remaining in his hands arising from the sale of the property described in the decree, the further sum of nine thousand dollars on account of the services and expenses of said company as trustee in the general mortgage, making in all the sum of fifteen thousand dollars paid to it on account of services as such trustee and four thousand dollars on account of its expenses incurred in the premises.

Third. It is ordered that said special master pay to Thomas E. Tutt, from the moneys in his hands arising from the sale of the property described in the decree, the sum of ten thousand dollars for his services and the responsibilities assumed by him under the order of May 31st, 1884, with respect to certain indorsed notes of the Wabash Company, and as custodian of the two thousand seven hundred and fifty bonds held by him under said order.

302 Fourth. It is ordered that Edmund T. Allen, special master, be allowed for his services and he is hereby authorized to retain from the moneys in his hands arising from the sale of the property described in the decree in this cause a sum which, together with what he has already received, will amount to twelve thousand dollars per annum from the date of his appointment, and that he be also allowed to retain a commission of one per cent. upon the amount of money received and paid out by him as such master or commissioner.

Fifth. The exceptions of the United States Trust Company and of Messrs. E. W. & Theodore Sheldon which were taken to the mas-

ter's report, filed herein June 11th, 1887, are overruled, and it is now ordered, adjudged, and decreed that in so far as said report fails to find any compensation due said E. W. & Theodore Sheldon as counsel, or to said company as trustee in the mortgage of the Council Bluffs and St. Louis Railway Company, or as trustee in the mortgage of the St. Louis, Kansas City & Northern Railway Company and of what is known as the "Omaha Division," said master's report is in all things confirmed and approved.

Sixth. The exceptions of James H. Britton to the report of the master filed herein on the 11th day of June, 1887, are overruled, and it is now ordered, adjudged, and decreed that said master's report, in so far as it failed to find any compensation due said James H. Britton, as trustee, is in all things approved and confirmed.

(Signed) AMOS M. THAYER, *Judge*.

On May 8th, 1888, said last-named order was amended by said judges by the entry of the following order:

303 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants, *vs.* THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.	In Chancery. Nos. 2357 and 2464, Consolidated.

Amendment of order in the matter of the transfer of assets and accounts of the receivers to the Wabash Western Railway Company fixing the compensation of the Central Trust Company for services, fixing the compensation of Thomas E. Tutt for special services under the order of May 31st, 1884, and compensation of Special Master E. T. Allen, and overruling exceptions of James H. Britton, trustee, and of United States Trust Company to master's report, filed June 11th, 1887.

MAY 8, 1888.

Now, on this day, come said parties, by their counsel, and on their motion and recommendation of the special master it is ordered, adjudged, and decreed that the second paragraph of
304 the order entered herein on the 14th day of April, 1888, be, and the same is hereby, amended so as to read as follows:

2. The transfer and assignment mentioned in the first paragraph of this order shall be made when the Wabash Western Railway Company shall have entered its appearance in this cause and in consideration of such transfer and assignment and pursuant to the terms and conditions of the decree of sale herein of date January 6th, 1886, and the order confirming said sale of date June 15th, 1886, and the terms and conditions of the deed by which said railway company acquired from James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, the purchasing com-

mittee, a part of the property described in said decree of sale, by stipulation, under its corporate seal, shall have assumed and agreed to pay all the claims and demands imposed upon the purchasers under said decree and said order confirming said sale, and upon their assigns, including all debts of the Wabash, St. Louis & Pacific Railway Company for labor and supplies, which said receivers have been directed to pay and which were not barred by the order of this court entered herein on the 28th day of February, 1888; also including all claims and demands growing out of the operation by said receivers of the railway property lately in their charge which have been or may be adjudged to be superior in equity to the mortgages foreclosed by said decree and which were not barred by said order of date February 28th, 1888; also all court costs and allowances as costs in this cause of this court and of the other courts entertaining ancillary jurisdiction of this cause remaining unpaid and which said railway company may be directed to pay, and shall have further agreed to file accounts in the clerk's office of this court, from time to time, as the court shall direct, of its receipts and disbursements in respect of the assets and claims and demands aforesaid.

AMOS M. THAYER, *Judge.*

On May 14th, 1888, and in pursuance of the terms of the last two above-named orders, said Wabash Western Railway Company filed in this cause its certain stipulation as follows:

305 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants, *vs.* THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.	In Chancery. Nos. 2357 and 2464, Consolidated.

Stipulation of Wabash Western Railway Company filed in pursuance of the order of April 14, 1888, as amended by the order of May 8, 1888, with respect to the transfer to it of assets and accounts of the receivers, filed May 14, 1888.

306 Now comes the Wabash Western Railway Company, a corporation organized under the laws of Missouri, and in compliance with the terms of an order entered herein on or about the 14th day of April, 1888, and amended on or about May 8th, 1888 (with respect to the transfer to it, the said Wabash Western Railway Co., of the assets and accounts of the receivers), it, the said Wabash Western Railway Co., hereby enters its appearance in this court as a party to the above-entitled cause, and in consideration of said order and the assignment and transfer by said receivers to it, the said Wabash Western Railway Co., of all the assets, uncollected accounts, and choses in action of the said Wabash, St. Louis and Pacific Railway Co., remaining in the hands of said receivers; also all the assets, uncollected accounts, and choses in action remaining in their hands and which have accrued to them as such receivers

from the operation of the railway property lately in their charge, and in pursuance of the terms and conditions of the decree of sale entered in said cause on or about January 6th, 1886, and the order confirming said sale, dated on or about June 15, 1886, and the terms and conditions of the deed by which said Wabash Western Railway Company acquired from James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, the purchasing committee, a part of the property described in said decree of sale, it, the said Wabash Western Railway Company, stipulates that it will pay, and it hereby assumes and agrees to pay, all claims and demands imposed upon the purchasers under said decree and said order confirming said sale, and upon their assigns, including all debts of the Wabash, St. Louis and Pacific Railway Company for labor and supplies which said receivers have been directed to pay and which were not barred by the order of this court entered herein on the 28th day of February, 1888; also including all claims and demands growing out of the operation by said receivers of the railway property lately in their charge, which have been or may be adjudged to be superior in equity to the mortgages foreclosed by said decree and which were not barred by said order of February 28th, 1888; also all
307 court costs and allowances as costs in this cause of this court and of the other courts entertaining ancillary jurisdiction of this cause remaining unpaid and which it, the said railway company, may be directed to pay; and it, the said railway company, further agrees to file accounts in the office of the clerk of this court from time to time, as the court shall direct, of its receipts and disbursements in respect of the assets and claims and demands aforesaid.

In testimony whereof said Wabash Western Railway Company has caused its name to be hereunto subscribed by its president and its corporate seal to be hereunto attached by its assistant secretary this 14th day of May, A. D. 1888.

WABASH WESTERN RAILWAY COMPANY,
By O. D. ASHLEY, *President.*

Attest: H. A. LLOYD,
Assistant Secretary.

On May 17th, 1888, the judges of said court entered, upon said stipulation, the following order:

308 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants,
vs.
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*, Defendants.
} In Equity. Nos. 2357 and 2464, Consolidated Cause.

Order In re Stipulation of Wabash Western Railway Company, May 17, 1888.

It appearing to the court that the Wabash Western Railway Company has entered its appearance in this court as a party to the above-entitled cause and filed a stipulation as required by the order of April 14th, 1888, as the same was amended by the order of May 8th, 1888, in which stipulation said Wabash Western Rail-
309 way Company has assumed and agreed to pay the indebtedness and costs in said orders mentioned—

It is therefore ordered that the commissioner, Edmund T. Allen, pay over to said Wabash Western Railway Company whatever balance may remain in his hands arising from the sale of the property described in the foreclosure decree entered herein.

(Signed) AMOS M. THAYER, *Judge.*

310 In the Circuit Court of the United States for the Eastern District of Missouri.

CENTRAL TRUST COMPANY OF NEW YORK, etc.,
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY.
Intervening petition of George I. Seney, trustee, for rental.

Stipulation.

It is stipulated, for the purpose of abbreviating the record, by and between the parties hereto that on the 29th day of May, 1884, when Humphreys and Tutt were appointed receivers of the property of the Wabash, St. Louis & Pacific Railway Company, the indebtedness of said company for labor and supplies and other preferential claims which said receivers were by the order of their appointment directed to pay from the earnings of said property (as shown by the quarterly reports of said receivers, which have been duly approved) amounted to $4,149,923.65, and that in addition to this the receivers paid judgments to protect sureties on appeal bonds, under orders of court, amounting to $267,567.35, making a total of $4,417,491.

2. It is also stipulated that the total earnings of all the railroads operated by said receivers from the date of their appointment to March 6, 1886, as shown by their said quarterly reports, which have been duly approved, were $25,615,478.87.

3. It is stipulated that the operating expenses of all the
311 railroads operated by said receivers from the date of their appointment to March 6, 1886, as shown by their said quarterly reports, which have been duly approved, were $24,151,249.55.

THEODORE SHELDON,
Solicitor for Intervenor.
WELLS H. BLODGETT,
Solicitor for Receivers Solon Humphreys & Thomas E. Tutt, The Wabash, St. Louis and Pacific Ry Co., James F. Joy, O. D. Ashley, Thos. H. Hubbard & Edgar T. Welles, and the Wabash Western Ry Co.

312 & 313 The general mortgage made by the Wabash, St. Louis and Pacific Railway Company to the Central Trust Company of New York and James Cheney, trustees, is in the words and figures following, to wit:

314 EXHIBIT B.

Wabash, Saint Louis and Pacific Railway Co. General Mortgage.

This indenture, made and entered into this first day of June, 1880, by and between the Wabash, Saint Louis and Pacific Railway Company, of the first part, and the Central Trust Company of New York and James Cheney, of Indiana, trustees, of the second part, witnesseth:

Whereas the railroad of the first party is subject to the lien of various mortgages and deeds of trust which have at different times been made and charged by way of lien on sections of said railroad, which at said times belonged respectively to different railroad companies by whom the same were made; and

Whereas the aggregate indebtedness of said railroad companies now outstanding and secured as above approximates the sum of thirty-six millions of dollars; and

Whereas said first party has incurred a further indebtedness for equipment, purchased by said first party, for use upon said railroad, and has assumed obligations made by its predecessors and constituent corporations for like purchases; and

Whereas further purchases will be required, and also expenditures for permanent improvements; and

Whereas the aggregate of such indebtedness and such further contemplated purchases and expenditures approximate the sum of six millions of dollars; and

Whereas said first party contemplates the extension of its railway by additional lines required to complete its system and to be acquired by contract, purchase, lease, consolidation, or construction; and

315 Whereas it is further contemplated by said first party that such acquisitions will require for purchase, completion, improvement, and operation of the same a sum approximating eleven

millions of dollars, to be secured by general lien, in addition to such sum as may in each instance be paid or secured by special lien; and

Whereas a meeting of stockholders of the said Wabash, Saint Louis and Pacific Railway Company was held at the office of the company, in Saint Louis, Missouri, on the fifth day of May, 1880, of which meeting notice in writing, signed by all of the directors of said company, was served personally or by depositing the same in a post office, directed to the post-office address of each of said stockholders severally, with necessary postage for the transmittal of the same prepaid, at least sixty days prior to the day appointed for such meeting, and by advertising the same in some newspaper published in each county through or into which the road of said company extends at least sixty days prior to the day appointed for such meeting; and

Whereas such notice stated the time and place of the meeting and the object thereof, the amount of the bonds of said company which it was proposed to issue and dispose of, and that it was proposed to secure said bonds by mortgage as above, and generally the purposes above set forth; and

Whereas, at said meeting, by the concurrence of the holders of more than two-thirds in amount of the stock of such corporation, the following resolutions were adopted:

Resolved, That for retiring and paying the various obligations which are specific liens upon sections of the railway of this company by virtue of deeds of trust or mortgage made by corporations formerly owning said sections, respectively, and for the discharge of indebtedness for purchase of equipment incurred or assumed
316 by this company, and to provide means for the extension of the railroad of this company by the acquisition, through contract, purchase, lease, or consolidation, of such additional lines as may be necessary to complete the same, and for the purpose of completing, finishing, improving, and operating the railroad of this company as now existing or as hereafter extended, the board of directors of this company are hereby authorized to issue and dispose of the bonds of this company to the amount of fifty millions of dollars, and to secure the same by deed of trust or mortgage covering the entire property and franchises of this company as now held or hereafter to be acquired, so that as to future acquisitions by this company said mortgage shall be a lien inferior only to such liens as may be specifically charged upon the property acquired at or prior to the acquisition by this company thereof, and shall be assumed by this company as part of the condition of such acquisition.

Resolved, That said bonds shall be in such denominations as the board of directors shall approve and shall be payable forty years after date, with interest at the rate of six per cent. per annum, payable semi-annually, which, with the principal, shall be payable at the office or agency of this company, in the city of New York, in gold coin of the United States of present value, and there shall be written in said mortgage such provisions, by way of remedy or

forfeiture, in the event of default, as the board of directors may approve.

Resolved, That the fifty thousand bonds which are intended to be secured by the said mortgage shall from time to time hereafter be made, executed, and issued when and as authorized by resolutions of the board of directors as sufficient capital stock of the company shall be fully paid and outstanding, to authorize the same without conflict with any law whereby the same would be otherwise affected, the said bonds to be numbered consecutively and to be of the same denomination, form, tenor, and effect, and that when and as the said bonds shall be issued each and all thereof shall have the same rights, lien, and privilege of said mortgage and shall be equally secured thereby, without preference or priority as to lien or otherwise of any one over another, except as aforesaid, and with the like effect as though all of the said bonds had been made, executed, and issued on the day of the date of the said mortgage.

317

Whereas this indenture, with the provisions and trusts hereinafter contained, has been duly approved by said board of directors and the said board has issued and is about to dispose of the bonds of this company as above set forth; and whereas said bonds to be executed and issued under the foregoing resolutions are to be of the form following—that is to say:

No. —. UNITED STATES OF AMERICA. $1,000.

Wabash, St. Louis & Pacific Railway Company General Mortgage Bond.

Know all men by these presents that the Wabash, St. Louis & Pacific Railway Company, a consolidated corporation of Ohio, Indiana, Illinois, and Missouri, for value received, hereby promises to pay to the Central Trust Company of New York and James Cheney, trustees, or bearer, at its office or agency, in the city of New York, on the first day of June, A. D. 1920, one thousand dollars in United States gold coin of the present standard of value, with interest thereon at the rate of six per cent. per annum, payable semi-annually, on the first days of June and December in each year, on presentation and surrender of the annexed coupons as they severally become due, free of all taxes, except such taxes as may be imposed by the laws of the State wherein the holder hereof shall have his domicile.

318

This bond is one of a series of fifty thousand bonds of one thousand dollars each, of like tenor and date, numbered from one to fifty thousand, the payment of the principal and interest of which is secured by an indenture of mortgage or deed of trust conveying to the said trustees in trust the entire railroad, equipment, franchises, leaseholds, property, and income of said company now held or which may hereafter be acquired, subject only to such prior liens as now exist and such specific liens on future acquisitions as may be assumed as part of the condition of such acquisition.

If default shall occur in the payment of the interest upon any of said bonds and such default shall continue for six months the principal of all of said bonds shall become due in the manner and with the effect provided in said mortgage or deed of trust.

It is, however, agreed between said company and the holder of this bond that no liability thereon shall be enforced against the individual estate of any stockholder of said company by virtue of any law of any State through which said railroad does now or may hereafter run.

Said company in such case hereby waives the benefit of any extension, stay, or appraisement laws now existing or that may hereafter exist.

This bond shall not become obligatory upon the company until the certificate endorsed hereon shall have been signed by the said trustees or one of them.

This bond shall pass by delivery or by transfer on the
319 books of said company, in the city of New York. After registration of ownership, certified hereon by the transfer agent of said company, no further transfer, except on the books of the company, shall be valid unless transferred to bearer on said books, after which this bond shall pass by delivery, as at first, but shall continue subject to registration and transfer to bearer successively, at the option of each holder.

In witness whereof the said company has caused its corporate seal to be hereto affixed and the same to be signed by its president and secretary this first day of June, 1880.

WABASH, ST. LOUIS AND PACIFIC RAILWAY CO.,
By —— ——, *President*,
By —— ——, *Secretary*.

No. —. $30.

The Wabash, St. Louis & Patific Railway Company will pay the bearer, in the city of New York, thirty dollars in U. S. gold coin on — day of ——, —, being six months' interest then due on the general-mortgage bond No. —.

—— ——, *Treasurer*.

No. —.

Wabash, St. Louis & Pacific Railway Company six per cent. general-mortgage bond. $1,000. Principal due June 1st, 1920. Interest payable June 1st and December 1st, in the city of New York.

Trustees' Certificate.

320 We hereby certify that this bond is one of fifty thousand bonds of $1,000 each secured by and mentioned in the mortgage within referred to.

—— ——,
—— ——,
Trustees.

Now, therefore, be it known that the Wabash, St. Louis & Pacific Railway Company, party of the first part, in consideration of the premises and in order to the security of the bonds hereinbefore described, to the extent of fifty millions of dollars and no more, has this day granted, bargained, sold, conveyed, and transferred unto the said Central Trust Company of New York and James Cheney, of Indiana, trustees, their heirs and successors in said trust, all of the right of way and railroad of the said first party extending from the city of Toledo, in the State of Ohio, through the State of Indiana and thence into the State of Illinois to Meredosia, with branch of said road to Naples and East Hannibal, and from Meredosia to Camp Point, in the State of Illinois, and with branch of said road from Clayton to the east bank of the Mississippi river, at Hamilton, in said State, and with branch of said road leading from Decatur, in said State, to East St. Louis, in the same State; and also the railway of the party of the first part extending from St. Louis, in the State of Missouri, in a northwesterly direction to Kansas City, Missouri, with a lateral extension from Moberly, in the county of Randolph, to Ottumwa, in the State of Iowa, and a branch from Salisbury, in the county of Chariton, State of Missouri, to Glasgow, in the county of Howard, in said State, and also an extension from Brunswick, in said county of Chariton, in a northwesterly direction to the city of Council Bluffs, in the State of Iowa; which lines of railroad will, when united, form one continuous line of railway in the same general direction from
321 the waters of Lake Erie, at Toledo, Ohio, to the cities of Council Bluffs and Kansas City, on the Missouri river as aforesaid, together with all the embankments, bridges, turn-outs, side tracks, buildings and structures, water-tanks and fixtures, shops, engine and other houses, depots, turn-tables, engines, cars, machinery, tools, ferry and other boats, and every other thing appurtenant to said railroad or used in connection therewith belonging to the said first party, together with all rents, issues and profits, credits and choses in action, accruing to said first party from said railroad and appurtenances as owner and holder thereof.

And the said Wabash, St. Louis and Pacific Railway Company, in consideration of the premises above recited and for the further security of the bonds above described, does hereby grant, bargain, sell, assign, transfer, and convey unto the said Central Trust Company of New York and James Cheney, trustees, their heirs and successors in said trust, all the right, title, and interest of said first party, as the same now exists or may hereafter exist by virtue of any contract, lease, purchase, or consolidation, in and to the following-described railroads now in process of amalgamation with the railroad of said first party, including with said railroads every appurtenance thereto or thing used in connection therewith, and all rents, issues, and profits arising therefrom to said first party, all of the above as fully as are above described with reference to the railroad now owned and held by said first party and as fully as it is or may be possible for said first party to convey the same:

The Boone County and Booneville railway, extending from Centralia to Columbia, in the State of Missouri.

The St. Louis, Ottumwa and Cedar Rapids railway, extend-
322 ing from Moberly, in the State of Missouri, to Ottumwa, in the State of Iowa.

The St. Joseph & St. Louis railway, extending from New Lexington and Richmond and Lexington Junction to St. Joseph, in the State of Missouri.

The Brunswick & Chillicothe railway, extending from Brunswick to Chillicothe, in the State of Missouri.

The St. Louis, Council Bluffs & Omaha railway, extending from Chillicothe to Elm Flats, in the State of Missouri.

The Chicago & Paducah railway, extending from Effingham and Altamount to Streator, in the State of Illinois.

The Chicago & Strawn railway, extending from Strawn to Chicago, in the State of Illinois.

The Eel River railway, extending from Logansport to Butler, in the State of Indiana.

The Quincy, Missouri & Pacific railway, extending from West Quincy, in the State of Missouri, to the Missouri river, opposite Brownsville, Nebraska.

The Missouri, Iowa & Nebraska railway, extending from Keokuk, Iowa, to a junction with the Omaha Division of the Wabash, St. Louis & Pacific railway, near the line between the State of Iowa and the State of Missouri.

The Champaign, Havana & Western railway, extending from Champaign to Havana, in the State of Illinois, and from White Heath to Decatur, in the State of Illinois.

The Toledo, Peoria & Western railway, extending from Warsaw, in the State of Illinois, to the State line of Indiana, and from La Harpe, in the State of Illinois, to Burlington, in the State of Iowa.

The Detroit, Butler & St. Louis railway, from Butler, in the State of Indiana, to Detroit, in the State of Michigan:

323 To have and to hold the said property, real and personal, including the said railroads, appurtenances, equipment, franchises, rights, credits, and choses in action and every interest herein granted, unto the said trustees as joint tenants and not as tenants in common and the survivor of them, his heirs and successors, but in trust, nevertheless, for the use and purposes herein declared and for the purpose of protecting and securing the holders of said fifty thousand bonds and each and every of them and upon the conditions following—that is to say:

The estate hereby conveyed and the lien of the trust hereby created shall be expressly subject and inferior to all such prior liens above referred to as are charged upon the several portions of the railroad and equipment of the railroad now of said first party and to the estate and lien of such specific trusts and mortgages or other obligations as may be hereafter made and charged by the said first party upon specific property which said first party hereafter may acquire and shall form part of the purchase-money or condition of the acquisition of the property so charged by said first party.

For the purpose of securing to the holders of any of said fifty thousand bonds that none of said bonds shall be issued except as above set forth, it is hereby stipulated on the part of said first party that the Central Trust Company of New York, one of the trustees herein, or its successors in said trust shall certify and deliver said bonds as follows:

1. Said bonds, to an amount not exceeding thirty-three millions of dollars, shall be certified and delivered in such sums as may from time to time be required, at par value, to such persons as may present for exchange at par value bonds secured by any of the following-described prior liens upon portions of the railroad of the party of the first part:

324 First-mortgage bonds of the Toledo & Illinois Railroad Company, due as extended August 1st, 1890, for the sum of nine hundred thousand dollars, secured by a first mortgage on that part of the road of the party of the first part extending from Toledo to the westerly boundary of the State of Ohio, about seventy-five miles.

Bonds of the Toledo & Wabash Railroad Company, due as extended November 1st, 1893, for one million of dollars, secured by a second mortgage on that portion of the road of the party of the first part last above named. First-mortgage bonds of the Lake Erie, Wabash & St. Louis Railroad Company, due as extended August 1st, 1890, for the sum of two millions five hundred thousand dollars, secured by a first mortgage on that part of the road of the party of the first part running entirely through the State of Indiana, about one hundred and sixty-eight miles.

Bonds of the Wabash & Western Railway Company, due as extended November 1st, 1893, for one million five hundred thousand dollars, secured by a second mortgage on that portion of the road of the party of the first part last named. First-mortgage bonds of the Great Western Railroad Company of 1859, due August 1, 1888, for the sum of two millions five hundred thousand dollars, secured by a mortgage of that part of the road of the party of the first part extending in the State of Illinois from Naples and Meredosia, at its western termini, to the boundary line between the State of Illinois and Indiana, about one hundred and seventy-nine miles.

Bonds of the Great Western Railroad Company of 1859, due May 1st, 1893, for two million five hundred thousand dollars, secured by second mortgage on that part of the road of the party first named, about one hundred and seventy-nine miles.

325 Bonds of the Illinois & Southern Railroad Company, due August 1st, 1882, for three hundred thousand dollars, secured by a first mortgage on that part of the road of the party of the first part extending from Clayton to Carthage, in the State of Illinois, about thirty miles.

Bonds of the Quincy & Toledo Railroad Company, due November 1st, 1890, amounting to five hundred thousand dollars, secured by a first mortgage on that part of the road of the party of the first part lying between the west bank of the Illinois river, opposite Meredosia, and Clayton, in Illinois, about thirty-four miles.

Bonds of the Decatur & East St. Louis Railroad Company, due August 1st, 1889, amounting to twenty-seven hundred thousand dollars, secured by a first mortgage by said company on that part of the road of the party of the first part lying between Decatur and East St. Louis, in the State of Illinois, a distance of about one hundred and eight miles.

Bonds of the Wabash Railway Company, due June 1st, 1909, amounting to five hundred thousand dollars, secured by a first mortgage on that part of the road of the party of the first part extending from Naples, in Scott county, Illinois, to the Mississippi river, at East Hannibal, a distance of about fifty miles.

Bonds of the Toledo, Wabash & Western Railway Company, known as consolidated bonds, due February 1st, 1907, secured by a mortgage on the whole line of the road owned by that company February 1st, 1867, and amounting to twenty-six hundred and ten thousand dollars.

Bonds of the Wabash Railway Company, dated May 17th, 1879, and due April 1st, 1909, for two millions of dollars, secured by a mortgage on the lines of road owned by that company at the date of said mortgage, subject to the prior mortgages hereinbefore specified.

326 Bonds and scrip secured by funded coupons of the mortgage bonds of the Wabash Railway Company, amounting to two million nine hundred and forty-two thousand four hundred and fifty dollars.

Bonds of the North Missouri Railroad Company, due March 9th, 1895, amounting to six millions of dollars, secured by a first mortgage on the road of the party of the first part between St. Louis and St. Joseph Junction, Missouri, about two hundred and sixty-five miles.

Real estate and railway mortgage bonds of the St. Louis, Kansas City & Northern Railway Company, due September 1st, 1895, for three millions of dollars.

Bonds of the St. Louis, Kansas City & Northern Railway Company, called the St. Charles bridge first-mortgage bonds, secured by a first mortgage on the bridge over the Missouri river at St. Charles, due October 1st, 1908, amounting to one million of dollars.

Bonds of the St. Louis, Kansas City & Northern Railway Company, called St. Charles bridge second mortgage, due October 1st, 1903, for three hundred and eighty-eight thousand five hundred dollars, secured by a second mortgage on the bridge over the Missouri river at St. Charles.

2. Said bonds, to an amount not exceeding six millions of dollars, shall be certified and delivered to said first party in such sums from time to time as the board of directors shall by resolution declare to be required to reimburse or meet the expenditures of said first party for equipment and for other permanent improvement of its railroad.

3. The remainder of said bonds, to an amount not exceeding eleven millions of dollars, shall be certified and delivered to said first party in such sums from time to time as the board of directors

of said first party shall by resolution appropriate to the pur-
327 chase, construction, or acquisition otherwise of such addi-
tional railroads, bridges, or connections as may, in the judgment of said first party, be required for the proper extension of its railway system; and as to any railroad so acquired the said first party hereby covenants that the application of said bonds shall not exceed fifteen thousand dollars, par value, for each mile of said railroad; and if, as one of the conditions of such acquisition, the first party shall assume or issue any obligation secured by a specific lien and as to such railroad a prior lien to that of the bonds secured hereby, the said sum of fifteen thousand dollars shall be taken to include such prior lien.

Whenever any of the bonds hereby secured shall be issued in exchange for bonds secured by prior liens upon the railroad and equipment now belonging to the party of the first part or which said first party shall hereafter acquire or the proceeds of any of the bonds secured hereby shall be applied in purchase of said prior bonds or any of them, then in either case whatever bonds shall be so received in exchange or purchase shall not be cancelled, but shall be the property of said trustees as such, and be retained as property belonging to their trust estate, and shall be so endorsed as shall prevent their application otherwise.

If the said Wabash, St. Louis and Pacific Railway Company or its successors or assigns shall well and truly pay or cause to be paid the several sums of money specified in the several bonds hereinbefore described, as well the principal as the instalments of interest, according to the tenor and effect of said bonds and of each and every of them and of the laws of the several States of Ohio, Indiana, Illinois, and Missouri, or if said bonds and the interest payable
thereon become in anywise paid or satisfied, then and in such
328 case the estate, right, title, interest, and demand of said parties of the second part, their successors in said trust and assigns, shall cease, determine, and become void; otherwise to be and remain in full force and virtue in law and for the benefit and security of the holders of said bonds and each of them.

Until default be made in the payment of the principal or interest of said bonds or of some or any of them the said railway company shall be permitted to possess, operate, manage, and enjoy said railroad, with its appurtenances, and to take and use the rents, incomes, tolls, issues, and profits thereof in the same manner and with the same effect as if this deed had not been executed.

In case default shall be made in the payment of any instalment of interest accruing on said bonds or any of them and such default shall continue for a period of six months after the maturity thereof it shall be lawful for said parties of the second part or their successors in said trust, by themselves, their agents or attorneys, to enter upon, take possession of, manage, operate, and control the railroad and property hereby conveyed, owned, or held by lease, contract, or otherwise by superintendents, receivers, and managers thereof, making from time to time all needful repairs, replacements, and such alterations, additions, and improvements as may seem to

be judicious and proper, and to collect and receive all rents, tolls, incomes, issues, and profits thereof, and, after deducting the expenses of operating said railroad and property and leasehold interests and all costs of improvements and any taxes that may have accrued thereon, as well as just and reasonable compensation for their own work and labor in and about the premises, to apply the moneys arising therefrom to the payment of interest in the order in which it becomes due and ratably to the persons entitled thereto;
329 and when said interest so in default and any instalment of interest subsequently maturing shall be paid up, then said parties of the second part shall restore the possession of said railroad to the said party of the first part.

If default shall occur in the payment of any instalment of interest, and such default continue for the space of six months after maturity and demand therefor, then if a majority in value of the holders of said bonds then outstanding and secured by this mortgage shall determine and notify said trustees that they require that the principal of all of said bonds become at once due and payable, said bonds shall thereby become due and payable, notwithstanding any clause contained therein to the contrary; and if said principal sum shall become due and not paid by said first party according to the tenor of said bonds, and upon written notice by the holders of a majority of the bonds issued and outstanding under the authority hereinbefore mentioned the said trustees shall have the power to enter upon and take possession of said railroad, with the appurtenances and all and singular the property and franchises hereby mortgaged, and the agents of the said railway company are hereby authorized and required to deliver up the same, and said trustees shall cause said mortgaged premises to be sold at public auction at the city of New York, or at the city of Saint Louis, Missouri, as may be directed by the holders in interest of a majority of said bonds, giving at least sixty days' notice of the time and place and terms of sale and of the specific property to be sold, publishing the same in two daily newspapers in said city of New York and one in the cities of Toledo, Lafayette, Springfield, and Saint Louis; to adjourn said sale from time to time, if necessary in their opinion, and if the same shall be adjourned to sell without further notice of the time
330 and place of sale, and to execute to the purchaser or purchasers a good and sufficient deed in fee simple for the same, which shall be a bar against the party of the first part and all persons claiming by, through, or under it, of all right, title, claim, or demand in and to the mortgaged premises or any part thereof, and out of the proceeds of such sale and the income that may have been received for the use, operation, and management of said road while in possession of such trustees, after deducting just allowances and expenses, as in the preceding article mentioned, to pay, first, the interest, and, second, the principal of said bonds, ratably and with due regard to the successive maturity of different series of coupons as far as said proceeds will go for that purpose, and in case any surplus should remain to pay the same over to the party of the first part; but in case it shall not be deemed proper or expedient, in all or any

of the States in which the mortgaged premises are found, to seize and sell the same in pursuance of the power herein granted, then it shall be the duty of said trustees to proceed in any proper tribunal to foreclose said mortgage according to the usual and established principles of law and equity; but it is expressly understood and agreed between the parties that in no case whatever shall the party of the first part claim any right or advantage by reason of any valuation, appraisement, stay, or extension laws that now exist or may hereafter be enacted in any of the States in which said property exists or may be found, and said first-named party hereby releases to the second parties all and every such right, claim, and demand, and hereby further agrees that it will neither apply for an injunction or any stay of proceedings to arrest or prevent such sale from being made or possession being taken as hereinbefore provided.

331 It is hereby expressly declared that this instrument is made and the trust herein declared upon condition that if any sale shall be made under and by virtue of this mortgage, whether by judicial decree or foreclosure or in execution of the trust so created, either by judicial decree or otherwise, the holders of a majority of the said bonds then outstanding shall have the right to have said premises and all property herein embraced purchased for the use and benefit of all the holders of said then outstanding bonds.

In case such sale shall be made by any person or officer other than the trustees herein named or their successors, then the holders of the majority of said bonds outstanding shall have the right, by notice in writing, to require the said trustees or their successors to make such purchase on such terms as they in said notice shall prescribe; and in case said sale shall be made by said trustees, then the holders of a majority of said outstanding bonds shall have the right to appoint any other person whom they may choose to make such purchase on such terms as they may prescribe. If any person other than such trustees shall be so appointed such appointment and the terms of purchase shall be in writing, a copy of which writing shall be delivered to said trustees or their successors before such sale.

And if the holders of a majority of said outstanding bonds shall elect to have said purchase made as aforesaid and shall prescribe the terms on which they desire to make the same, then it shall be the duty of said trustees or their successors or such other person as may be appointed as aforesaid to make such purchase if the same can be made on the terms so prescribed, and, having so purchased said premises and property, the right and title thereto shall vest in the said trustees or person so purchasing for the use aforesaid,

332 and no bondholder shall have any claim to the said premises or property or the proceeds thereof, except his *pro rata* share therein, as represented by a new company or corporation, to be formed for the use and benefit of the holders of all said bonds then outstanding; and said trustees or person making said purchase shall take such lawful measures as may be deemed for the interest of all said bondholders to organize a new company or corporation, said company or corporation to be so organized upon such terms, conditions, or limitation, and in such manner as the holders of a majority

of said outstanding bonds shall in writing request or direct; and thereupon the said trustees or other person making said purchase shall convey said premises and property to the new company or corporation; and it is hereby declared that all persons who shall claim any interest, benefit, or advantage by virtue of this instrument or the trust hereby created shall take the same subject to all the terms herein contained and subject to all the rights and powers conferred by this instrument on the holders of a majority of the bonds hereby secured.

It is further declared that in case of any sale of the premises and property embraced herein by decree of any court or otherwise the holders of a majority of the bonds then outstanding shall have the right to determine whether said premises and property shall or shall not be sold subject to all prior encumbrances, and such majority shall sufficiently manifest their determination in such respect by giving notice thereof in writing to the trustees or person making such sale at any time before such sale is made.

In case of the resignation or incapacity of the trustees or either of them herein named to act as trustee or in case of the death, resignation, or incapacity to act of any successor of said trustees it
333 shall be the duty of the board of directors of said railway company immediately thereafter to make application to some proper court of record at the county where the general office of said railway company is located for the appointment of some suitable person, persons, or corporation to become the successor of said trustees, and thereupon the person, persons, or corporation so appointed shall be, and are hereby, vested with all the estate, rights, and privileges, and liable to all the duties by this instrument conferred upon or to the parties of the second part to the same extent as if each person, persons, or corporation were herein named.

It is hereby agreed and understood that, for the better assurance to the parties of the second part and to the holders of the bonds secured by this instrument, the party of the first part agrees that it will, on demand at any and all times hereafter, make, execute, and deliver all such other and further conveyances and assurances for the better assuring unto said trustees and their successors in the trust hereby created the said railroad, with appurtenances, equipment, and property hereinbefore described or intended so to be, and all other property belonging to said party of the first part now owned or hereafter to be acquired, as above provided and set forth, or any and all the franchises now held or hereafter to be acquired by the party of the first part as said trustees or their successors, by their counsel, shall reasonably advise, devise, or require.

Whenever it shall happen, from changes required to be made in said railroad and appurtenances, that any parcels of property, whether real or personal, have become unnecessary or useless to the said railroad company for its business by reason of change of line or depot or other grounds, or when any of the personal property shall have become worn out or inefficient and unnecessary to
334 the operation of said railroad, then and in such case it shall be lawful for the directors of said railway company to make

sales, exchanges, or other disposition of such parcels of real or personal property as they may deem for the best interest of said railway company, and upon the sale or exchange of such property for any other and when any other property shall be acquired in the place of such property the same shall be held subject to the lien of this mortgage as if it was the property of said company at the date hereof, and the parcels of property so held and disposed of by said directors shall be exempt from the lien herein created.

It is further agreed that neither of said trustees shall be required to take any action under this deed, in the event of default, until the party asking such action shall have indemnified such trustee for expenditure necessarily involved.

In witness whereof the said party of the first part—that is to say, the said Wabash, Saint Louis & Pacific Railway Company—has caused these presents to be signed in its incorporate name by Solon Humphreys, president, and attested by James F. How, its secretary, with the corporate seal of said company hereto, as authorized and directed by its board of directors, the day and year above written.

WABASH, SAINT LOUIS & PACIFIC RAILWAY COMPANY,
By SOLON HUMPHREYS, *President.*

Attest: JAMES F. HOW, *Secretary.*

Signed and sealed in the presence of—
WM. J. HARDING.

335 STATE, COUNTY, AND CITY OF NEW YORK, *ss:*

Be it remembered that on this seventh day of June, 1880, personally came before me, the undersigned, a notary public within and for the county aforesaid, Solon Humphreys, who, being by me duly sworn, did depose and say that he is the president of the Wabash, Saint Louis & Pacific Railway Company, grantor in the foregoing instrument; that the name of said company is signed to said instrument by him and by virtue of the order of the board of directors of said company, as president thereof; that the seal of the company attached thereto is the proper and genuine seal of the said railway company, and is affixed thereto by order of said board of directors; and the said Solon Humphreys, president, acknowledged the foregoing instrument to be the act and deed of the Wabash, Saint Louis & Pacific Railway Company for the uses and purposes therein expressed.

In witness whereof I have hereunto set my
[NOTARIAL SEAL.] hand and affixed my notarial seal of office this seventh day of June, A. D. 1880.

WM. J. HARDING,
Notary Public, Kings County, State of New York.

Certificate filed in New York county.

STATE OF MISSOURI, } ss:
City and County of St. Louis, }

Be it remembered that on this — day of June, 1880, personally came before me, the undersigned, a notary public within and
336 for the county aforesaid, James F. How, who, being by me duly sworn, did depose and say that he is the secretary of the Wabash, Saint Louis & Pacific Railway Company, grantor in the foregoing instrument; that he countersigned said instrument and affixed the seal of said company thereto by order of the board of directors thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal of office this — day of June, A. D. 1880.

——— ———.

The divisional mortgages upon the property of the Wabash, St. Louis and Pacific Railway Company were substantially as recited in the decree of January 6th, 1886, foreclosing the general mortgage, which divisional mortgages are for the sake of brevity omitted from this record.

337 It is stipulated that the actions brought by the intervenor in the circuit courts of the United States for the southern district of Iowa and the western district of Missouri for the foreclosure of each of the mortgages in his intervening petition described have been prosecuted to final decree, and sale of the mortgaged premises has been had. The mortgage security was inadequate to satisfy the petitioner's debt, and a deficiency decree in each of said actions of upwards of $200,000.00 has been entered in his favor, which is still wholly unpaid.

THEODORE SHELDON,
Solicitor for George I. Seney, Trustee, Intervenor,
WELLS H. BLODGETT,
Solicitor for Defendants, Solon Humphreys and Thomas E. Tutt, Receivers; the Wabash, St. Louis & Pacific Ry Co.; James F. Joy, O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles and Wabash Western Ry Co.

338 UNITED STATES OF AMERICA, } ss:
Eastern Division of the Eastern Judicial District of Missouri, }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record, pleadings, and proofs *In re* George I. Seney, trustee, intervenor, in case Nos. 2357, 2464, of Central Trust Company of New York and James Cheney, complainants, against The Wabash, St. Louis and Pacific Railway Company *et al.*, defendants, as fully as the same remain on file and of record in said case in my office.

Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this eighth day of October, in the year of our Lord eighteen hundred and eighty-nine.

A. P. SELBY,
Clerk of said Court.

339 [Endorsed:] No. 2357. United States circuit court, eastern division of the eastern judicial district of Missouri. *In re* George I. Seney, trustee, against Wabash, St. Louis and Pacific Railway Co. *et al.* Duly certified transcript in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 1364. George I. Seney, trustee, appellant, *vs.* The Wabash Western Railway Company. Filed October 14, 1889.

1 In the Circuit Court of the United States for the Eastern District of Missouri.

CENTRAL TRUST COMPANY OF NEW YORK
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY CO. *et al.*

THURSDAY, *June 26th*, 1884.

SOLON HUMPHREYS, being duly sworn, testified as follows:

Examined by Mr. BLODGETT:

Q. How long have you been connected with the lines of railroad that composed the Wabash, St. Louis & Pacific railway immediately after the consolidation east and west of the river?

A. According to my recollection, I was president of the company for from two to three years, up to December, 1881.

Q. Before the consolidation were you in any manner connected with either the St. Louis, Kansas City & Northern or the Wabash Railway Company?

2 A. Yes, sir; I was a director in the St. Louis, Kansas City & Northern from the time of its organization, and also director in the Wabash Railway Company from the time of its reorganization, in 1877.

Q. State what you know concerning the earnings of the lines which formerly constituted what was known as the St. Louis, Kansas City & Northern railway, the operating expenses of said lines, and whether the lines composing said system have respectively or as a whole earned, since the consolidation, enough to pay operating expenses, cost of maintenance, taxes and interest upon the bonds which were secured by mortgage on those lines at the date of the consolidation.

A. From my general knowledge of the earnings of the system west of the Mississippi river I have no doubt that *what* it has, since its consolidation with the Wabash Railway Company, earned a large amount more than sufficient to pay the interest on all the obligations that then existed, in addition to the operating expenses, maintenance, and taxes.

3 Q. State, if you can, what obligations there were, at the date of the consolidations, secured by mortgage upon the respective lines which composed what was known as the St. Louis, Kansas City & Northern railway previous to the consolidation.

A. In answer to that question I will say the first-mortgage bonds of the old North Missouri railroad, $6,000,000 7 per cents.; of the St. Louis, Kansas City & Northern railway real-estate mortgage, $3,000,000 7 per cents.; of the St. Louis, Council Bluffs & Omaha railroad, $626,000 6 per cents.; the Brunswick & Chillicothe railroad, $304,500 6 per cents.; the St. Louis, Ottumwa & Cedar Rapids railroad, $322,500 7 per cents.; Boone County & Booneville railroad, $100,000 7 per cents.; the Omaha division bonds of the St. Louis,

Kansas City & Northern railroad, $2,350,000 7 per cents.; first-mortgage bonds of the St. Charles bridge, $1,000,000 6 per cents.; the second mortgage of the St. Charles bridge, $338,500 7 per cents.; the Clarinda & St. Louis, $264,000 6 per cents., making a total of $14,355,500, the aggregate interest upon which is $982,940.

4 Q. State what you know concerning the earnings of the lines which formerly constituted what was known as the Wabash railway, the operating expenses of said lines, and whether the lines composing said system have respectively or as a whole earned since the consolidation enough to pay the operating expenses, cost of maintenance, taxes and interest upon the bonds which were secured by mortgage on those lines at the date of the consolidation.

A. I make the same answer to this question as to the question in regard to the system west of the river.

Q. State, if you can, what obligations there were at the date of this consolidation secured by mortgage upon what was known as the Wabash railway east of the Mississippi river.

A. The first-mortgage bonds of the Toledo & Illinois railroad, $900,000 7 per cents.; of the Lake Erie, Wabash & St. Louis railway, first mortgage, $2,500,000 7 per cents.; of the Great Western railroad of 1859, $2,496,000 7 per cents.; of the Illinois and Southern Iowa railroad, first-mortgage six per cents., $300,000; of the Decatur and East St. Louis railroad, $2,700,000 7 per cents.; of

5 the Quincy & Toledo railroad, $500,000 7 per cents.; of the Toledo & Wabash railroad, second mortgage, $1,000,000 7 per cents.; of the Wabash & Western railroad, $1,500,000 7 per cent.; of the Great Western railway of 1859, second mortgage, $2,500,000 7 per cents.; of the consolidated mortgage of the Toledo, Wabash & Western Railway Company, $2,610,000 7 per cents.; of the Wabash Railway Company of 1879, $2,000,000 7 per cents.; of the Wabash Railway Company funded-debt bonds, 7 per cents., $565,500; of the same company, funded debt bonds, graduated, $1,401,000 6 per cents.; of the same company, graduated scrip certificates, 6 per cents., $552,975.50; of the same company, graduated scrip certificates from August 1st, 1877, $115,385 7 per cents.; of the same company, graduated scrip certificates from February 1st, 1877, $374,814.87; of the first-mortgage bonds of the Hannibal & Naples railroad, $500,000 7 per cents. That amounts altogether to $22,515,675.37; interest charged, $1,525,557.52. I will state

6 in regard to these scrip certificates that they are fundable into the 7 per cent. funded-debt bonds and graduated funded-debt bonds mentioned above, and that that process has been going on since, of funding the scrips into the bonds, so that the amounts now outstanding, as stated above, would be different, but in the aggregate the amount of the funded-debt bonds and the scrips together would be the same.

Q. Do you know anything about the acquisition by the Wabash, St. Louis & Pacific Railway Company of a line known as the Quincy, Missouri and Pacific railroad—whether it was acquired by the Wabash?

A. I know it was. It was done during my administration as president.

Q. State where that line begins and where it terminates, and whether, from your knowledge of the line, it has earned its operating expenses, cost of maintenance, and the interest on the bonds that were secured thereon by mortgage at the time it was acquired.

A. That line extends from the Mississippi river opposite Quincy to Trenton, in the State of Missouri, on which the mortgage
7 is $1,204,000 6 per cents. From a report of the earnings in 1883 it earned in that year $22,408 more than the maintenance and operating expenses. The first three months of this year it has earned $7,310 more than the operating expenses and maintenance.

Q. What were the interest and taxes for the year 1883?

A. $72,240 was the interest and the taxes were $16,420.

Q. Between what points does the Indianapolis, Peru & Chicago railroad extend, and what do you know concerning its earnings since the date of its acquisition and as to whether they have been enough to pay its operating expenses, cost of maintenance, and interest upon the bonds which were secured by mortgage thereon at the time of its acquisition?

A. That road extends from Indianapolis to Michigan City; its earnings in 1883 were $8,150 more than the operating expenses and cost of maintenance. At the time it was acquired it was subject to the lien of two mortgages, one for $275,00–. on that part of the
8 road between Peru and Indianapolis, and one for $1,000,000 on that part of the road between Michigan City and Peru, both 7 per cents., and the Wabash, St. Louis & Pacific railroad issued its mortgage upon the whole line for $2,000,000 six per cents., known as the Indianapolis division mortgage.

Q. So that you state as a fact that it did not earn enough to pay the operating expenses, cost of maintenance, and interest on those bonds?

A. The interest on the mortgages was $209,250 and the taxes were $13,722, against which it earned only $8,150.

Q. I will ask you concerning the acquisition of the Toledo, Peoria & Western railroad, between what point that road is constructed, and whether it has since the date of its acquisition by the Wabash, St. Louis & Pacific earned enough to pay its operating expenses, cost of maintenance, and interest upon the bonds that were secured thereon by mortgage at the time of its acquisition?

A. It extends from Sheldon, Illinois, westward to the east
9 bank of the Mississippi river opposite Keokuk and Burlington, in Iowa, and to Warsaw, in Illinois. It was acquired soon after the consolidation, with these mortgages upon it—a first mortgage of $4,500,000 and a preferred income mortgage of about $2,500,000, of which there is now outstanding $1,189,000, and the other portion is owned by the Wabash Railway Company, acquired by the exchange of its preferred stock. The net earnings in 1883, after paying the cost of operating expenses and maintenance, left a net amount of

$105,147. The interest and taxes for that year on the first mortgage and on the $1,189,000 incomes outstanding were $597,534.

Q. State concerning the acquisition of what was known as the Havana, Rantoul & Eastern railroad whether it was acquired by the Wabash, St. Louis & Pacific Railway Company; and, if so, between what points its line extends and subject to the lien of what mortgage it was acquired.

A. That road was acquired after the consolidation, and it extends from Le Roy, Illinois, to West Lebanon, Indiana, where it
10 connects with the main line. It was acquired subject to a mortgage of $300,000, seven per cents. The Wabash, St. Louis & Pacific purchased all its stock at the time of the acquisition.

Q. State what you know concerning its earnings and whether they have been sufficient to pay its operating expenses, cost of maintenance, and interest upon the bonds secured by mortgage thereon.

A. The operations of 1883 show a deficit of $36,770, in addition to $24,293 interest and taxes. The road is about 100 miles long.

By the MASTER:

Q. How did the complainant corporation acquire all the stock of that road?

A. It bought it.

Q. Do you remember what it paid for it and how?

A. No, sir; I don't remember. I think it paid cash.

Q. Do you remember when it was acquired?

A. I should say about three and a half years ago—in 1881.

Q. When does the interest mature on those bonds?

A. In July and January.

11 By Mr. BLODGETT:

Q. I will ask you now concerning the acquisition of the Centerville, Moravia & Albia railroad—whether it was acquired by the Wabash, St. Louis & Pacific railroad; if so, between what points the line runs; and whether it has since its acquisition earned enough to pay its operating expenses, cost of maintenance, and the interest upon the bonds secured by the mortgage thereon at the time it was acquired.

A. I think it was acquired in 1881. It extends from Centerville, Iowa, to Albia, Iowa. It has not earned its operating expenses or anything towards its interest since its acquisition, and in 1883 there was a deficit of $11,976 in its cost of maintenance and operating expenses, in addition to $24,981 interest and taxes.

Q. I will ask you now concerning what is known as the Cairo division of the Wabash, St. Louis & Pacific railway—between what points that division extends and whether it has since its acquisition earned enough to pay its operating expenses, cost of main-
12 tenance, and the interest upon the bonds secured thereon by mortgage at the date of its acquisition.

A. The Cairo division extends from Cairo, Illinois, to Danville, Illinois, where it connects with the main line, about 265 miles. It has not earned anything towards its interest since its acquisition, and in 1883 there was a deficiency, over and above its earnings, for cost of maintenance and operating expenses of $188,757, in addition to $244,781 interest, taxes, and cost of Cairo transfer.

Q. State what you know concerning the acquisition of the Champagne, Havana & Western railroad by the Wabash, St. Louis & Pacific and whether that line has since the date of its acquisition earned enough to pay its operating expenses, cost of maintenance, and the interest upon the bonds secured by mortgage thereon at the time it was acquired.

A. That road was acquired after the consolidation, and extends from Champaign to Havana, Illinois, with a little branch down to Monticello from Decatur; in all, 112 or 120 miles. I have no
13 knowledge at present of its earnings prior to 1883, but in 1883 there was a deficiency, over and above its earnings, in its cost of maintenance and operating expenses of $19,540, in addition to $118,715 interest and taxes.

Q. State what you know concerning the line known as the Iowa division of the Wabash, St. Louis & Pacific railroad, when it was acquired, between what points it extends, and whether it has since the date of its acquisition earned enough to pay its operating expenses, cost of maintenance, and the interest upon its bonded debt.

A. I think it was acquired in 1881. It extends from Alexandria, on the Mississippi river, to Humeston, in Iowa. It has not earned anything towards its interest since it was acquired, and in 1883 there was a deficiency of $12,780 in paying its operating expenses and cost of maintenance, and in addition $133,317 interest and taxes and the charge for trackage into Keokuk.

Q. I will ask you now to state generally such matters as may occur to you and which are relevant to the several allegations of this petition.

14 A. I think it is proper first to say that these earnings are made up on the *pro rata* basis of milage with the main line, while it is usual in working branch lines in estimating the earnings that a fair allowance should be made for the shorter lines, such allowance varies from a small percentage up to perhaps 10 per cent. The Quincy, Missouri & Pacific line, however—under the terms of its acquisition it was agreed to allow that line 10 per cent. on the earnings of the traffic going over the main line, which no doubt accounts for the profit that is shown in operating that line in 1883; otherwise there would undoubtedly have been a deficiency in running expenses and maintenance.

By the MASTER:

Q. What information have you with reference to the condition of maintenance in which this road and its various branches have been

kept during the last two or three years, and what is its condition to-day?

A. The only recent knowledge that I have is from passing over the main line from Toledo to St. Louis. I found it in most
15 excellent condition. Mr. Talmadge, who has been over the whole system and is now in charge, informs me that the lines west of the Mississippi are in most excellent condition, and that the lines east of the river compare favorably in their condition with other like roads in the States of Illinois and Indiana, with the exception of the Cairo division, which needs some money spent on it to make it in the usual condition of that class of railroads; but he said no extraordinary amount would be required.

Q. What is the fact at the present time in regard to the cost of labor and supplies necessary to keep in shape the maintenance of the road as compared with other years?

A. I will say that while labor is about the same as it has been in the past two years, the cost of all supplies and materials required for the maintenance of a railroad is very much less—I should say at least twenty per cent.

Q. So far as you have any information, during the last two years, take 1883 and 1882, has there been any extraordinary amount
16 expended upon this system for maintenance?

A. So far as I have any knowledge, the usual amount has been expended; they could not have worked the road safely without spending the usual amount.

Q. And no more than the usual amount has been spent, so far as you are informed?

A. So far as I am informed, that is so, except for some extraordinary repairs that had to be made by reason of damage from floods and accidents to bridges, and I think there have been more than usual renewals required in the past two years.

Q. So that leaving out of account such extraordinary expenditures as required by the St. Charles bridge and freshets, during the next six or twelve months there is no reason to apprehend any larger requirements for maintenance than have been spent during the last six or twelve months, taking the months and years together?

A. That is my belief, in accordance with the information that I have been able to obtain from a diligent inquiry into all
17 those matters.

Q. Are you able to state what has been spent on the system during the first six months of this year as compared with the first six months of last year?

A. I am not at present.

Q. To what general causes do you attribute the financial condition of this complainant at the middle of last month?

A. I should say to the failure of the crops in the States of Illinois and Indiana in 1882 and 1883, to injury from floods, which in both of those years, according to my recollection, interfered largely with the movement of traffic to and from St. Louis and Hannibal, and also to the injury arising from the disaster to the St. Charles bridge

in 1881, which affected all our traffic, especially our passenger traffic, largely in 1882, and which we are now recovering from, and the payment of unearned interest, taxes, &c., upon the several branch lines that I have alluded to.

Q. What are the resources from which coupons maturing
18 in July and until January of next year can be paid?

A. The resourses will be the earnings of the road, which, in my opinion, will be largely in excess of the interest that will be required to be paid on all bonds which existed at the time of the consolidation of the St. Louis, Kansas City & Northern and the Wabash railway in 1879, including also the Chicago and Detroit divisions, which have been acquired since.

Q. In the answer that you have just made do you mean also to include all claims and accounts which under the order appointing you and Mr. Tutt as receivers the court has directed to be paid?

A. I do not, but I believe that, taking the earnings for the next twelve months, there will be most ample to pay the interest upon the bonds before referred to and also the claims ordered to be paid by the court.

Q. In making that answer do you take into account the deficits likely to accrue in operating lines of road where the receipts are not equal to the operating expenses and charges of maintenance?
19 A. I do, because I believe that those deficits, which I find, taken together, amounted to less than $300,000 in 1883, will be largely reduced in nearly every instance—first, by the change of management in working those branches, and, second, by the better crops that we are now promised in every one of those sections.

Q. To what extent does your belief depend upon the contingency of a good crop in those sections?

A. I believe with the same condition of crops that we have had for the past two years we will have earnings enough to cover all such deficiencies.

By Mr. BLODGETT:

Q. I will ask you now about the Chicago division—the points between which it extends and whether it will continue to earn more than the operating expenses and cost of maintenance.

A. The Chicago division was acquired, I think, in 1880, and consists of the old Chicago & Dubuque railroad and a new road that was built extending that road to Chicago, called the Chicago & Strawn road. Those two properties together were acquired,
20 and the mortgage of $4,500,000 was issued for the acquisition of those two properties; that mortgage was paid for those two properties, and I believe that from its very commencement, or soon after, it has earned the interest upon those bonds over and above its operating expenses, cost of maintenance, taxes, and interest.

Q. I will ask now about the lines of road extending from Logansport to Butler, in Indiana, and from thence to the Detroit Junction, in the State of Michigan, and whether they have earned enough to pay the operating expenses, cost of maintenance, and the interest upon the funded debt; and, if not, whether you know of any special

reason why in the interest of the company and its creditors they should be preserved in the system?

A. I will state that in working the Wabash railway when I was president, in the year 1880 and part of the year 1881, we found such a volume of traffic terminating at Toledo that it became apparent that that road would have to be double-tracked. Many days
21 during the fall season there was a movement of over a thousand cars a day each way, besides passenger trains, which is an unprecedented volume of traffic over any single track in this country, and the question came up whether we should double-track the road or whether we should acquire the Eel River road and join the contemplated road from Butler, its eastern terminus, to Detroit, which was then in contemplation. The advantages of acquiring this latter line were that at Detroit we could reach independent lines to the east from there, which we could not do at Toledo by reason of the Lake Shore, Canada Southern, and Michigan Central roads extending from Buffalo to Chicago, Toledo being about in the center of those lines, and of course whenever the traffic was large from Chicago to the eastward the Wabash road was blocked up, or bottled up, as it were, and hence the necessity of forming a connection at Detroit with the Great Western railway of Canada and the Grand Trunk railway, which were independent roads and which had the same interest in getting an outlet to the west
22 that the Wabash had in getting an outlet to the east. I speak of these things as the inducement for the Wabash to enter into the acquisition and construction of the Eel River road and its extension to Detroit. That acquisition was completed in the fall of 1881, but, strange to say, from that time to this, from what causes I cannot explain, that line has never been utilized to any extent to carry out the purposes for which it was acquired. In my opinion, the future value and success in all efforts to make the Wabash railway a great and complete system, with power to cope with its competitors, this line must be kept intact and its through traffic, both passenger and freight, must be worked over it. With anything like full crops the Wabash will have all it can do to Toledo without taking its through traffic over that; with both combined and with anything like full crops, it will be utterly impossible to transact its business east and west through Toledo for at least four or five months in the year. In the months of October and November of
1880, I think it was, but perhaps it was 1881, I estimated
23 at that time, when I was president of the road, that our loss in those two months by reason of our inability to get our traffic taken to the east from Toledo by the Lake Shore and Canada Southern roads, our only connections, amounted to over $800,000. Our entire system from St. Louis to Toledo was blocked almost everywhere, every side track was filled with cars so that they could not move, because they could not get rid of the stuff at Toledo, and it extended, though in a somewhat less degree, to Kansas City. Our traffic out of St. Louis at that period was almost nothing. These are some of the reasons that induced the acquisition of what is known as our Detroit line. I will say, further, that one of the

inducements to acquire this line and to take our traffic over it was that it gives us in all through business about sixty miles longer haul and, of course, the profit to be derived from that much longer use of our line in all through traffic. On passengers, for instance, the prorate would give us, as I am told now, about $1.60 more
24 per passenger and the same relative per cent. on freight, while the cost of hauling that additional sixty miles would be scarcely appreciable. I will also state that I find that the Eel River road shows a deficit in its maintenance and operating expenses for 1883 of $44,568, in addition to its rental and taxes, $133,523; that the Detroit and Butler road shows a deficit of $54,391, in addition to interest and taxes, $123,815, in addition to which the terminal charges at Detroit are $68,556. I will state that those terminal charges were prepared for this large volume of through business which we expected to do there. We have the most complete terminal arrangements there of any city—enough to do the whole volume of the whole through traffic of the Wabash railroad to and from the east, and yet the Wabash Railway Company has done practically nothing to utilize those terminal arrangements.

By the MASTER:

Q. Are those terminal arrangements owned by the Wabash?

A. They are leased to it. They were prepared under an agreement with what is known as the Detroit Union Depot Ele-
25 vator Company on a charge of seven per cent. interest upon their actual cost.

Q. You made a remark a few minutes ago that you were surprised to find that the through business of the Wabash system had not been done over this Eel River road and the connecting lines. Is that a subject of surprise, considering the diminished business during the last two years as compared with the previous years that was going east over your line?

A. As I understand the policy that has been pursued in the past two years and that ought to be pursued, it is a surprise to me. For instance, our entire through traffic, I am told—I have not gone into it—was less than one million dollars in 1883, while, in my opinion, if the Wabash Railway Company had been operated for all its best interests it should have had its fair share of the through traffic, which would have largely exceeded one million dollars.

FRIDAY, *June 27th*, 1884.

The examination of Mr. SOLON HUMPHREYS was resumed on this day as follows:

26 The WITNESS: The cost of the terminal facilities at Detroit, as I stated yesterday, is 7 per cent. upon the cost of that portion of those terminal facilities which are specially set apart for the use of the Wabash lines. The Union depot was established for the accommodation of other roads, as well as the Wabash, terminating at Detroit, and we have exclusive rights in perpetuity in that portion set apart for the Wabash on the basis of 7 per cent. interest on the actual cost.

By the MASTER:

Q. At what point does this Detroit branch, including the Eel River road, leave the main line of the Wabash road?

A. The Eel River line commences at Logansport. That is where the branch is.

Q. May it not be that the general system of the Wabash west of Logansport has during the last two years derived all the advantage of that Detroit connection, even though it has not used it, which would have been derived to the system by its use from the fact of the opportunity of having that outlet for its through business
27 by adjustments of freight, either in rate or amount received for it, which has gone over its line west of Logansport and its connection with Toledo?

A. I should say decidedly not. We are unable to make any connection with the Great Western or the Grand Trunk system to take us to connections with the Erie railroad and the Delaware, Lackawanna & Western railroad and with the New York, West Shore and Buffalo railroad, which has been recently opened. We cannot reach those great eastern outlets, which I regard as of vast importance to the Wabash system, in any other way than through Detroit unless we use the lines of the Lake Shore, the Canada Southern, and the Nickle Plate, all of which have their lines running to Chicago, and therefore are unavailable to us at times when there is any great pressure of traffic from the west over those lines to the east.

Q. Is it not true that during the last two years, or since the Detroit connection has been effected, there has been no pressure
28 upon the facilities for handling freight east of Logansport?

A. Most of the time that has been so by reason of the short crops that we have had in the past two years; but with anything like full crops that difficulty which I referred to in my testimony yesterday would be right upon us again unless we had this additional outlet.

Q. You have had a long experience in railroading and have been for many years connected with railroad enterprises of one kind and another, have you not?

A. Yes, sir; I have been connected with various railroad enterprises in the past twenty years.

Q. Is it sometimes the policy of railroad systems to build a connection for the sake of using that connection simply as a lever for getting favorable rates or favorable connections in other directions; for instance, might it not be not an unusual thing to have built or made such a connection as this from Logansport to Detroit for the sake of making favorable terms for the handling of freight
29 to Toledo and east from Toledo on connecting lines at that point?

A. I can hardly conceive of any such motives that induced this——

Q. My question is not *at* to whether that was the motive in this

case, but whether such motives do not sometimes properly influence the securing of connections in railroad systems?

A. I can hardly conceive of any parties going to the enormous expenditure of money required to build and maintain a road, and then not utilizing it, for any such purposes as are indicated in your question.

Q. Then in your judgment, as indicated by your answer to the question which has been put, it is your opinion that the Wabash road as a whole has not up to this time derived the benefits which should have been derived from this connection from Logansport to Detroit?

A. I am sure that it has not.

Q. And that no collateral advantages which are not shown by the statements of what has been done over this line by itself
30 have been gained by the system from having made that connection?

A. The Wabash has not gained those advantages that it ought to have gained.

Q. Then it is your opinion that if this connection had been utilized as it ought to have been, or as it might have been, there would be a different showing of results both as to the general system and as to the receipts upon this specific part of the system?

A. I have no doubt whatever of it in my own mind. I speak thus confidently from my own knowledge of the through traffic that this connection enables us to control and that without it we cannot control.

Q. Are you sufficiently informed with reference to the business of the Wabash system which might be obtained from the southwest so to be able to state that it would not lose part of that business by reason of utilizing its connection from Logansport with the roads meeting it at Detroit?

A. My belief is that we would not lose anything like what we would gain in utilizing the Detroit line, and I do not see
31 where we would lose any considerable portion of our through traffic by reason of changing its course from Toledo to Detroit.

Q. Have you in your mind any class of through traffic that would be imperilled by that change?

A. That would depend in a large degree upon the future arrangements that would be made with the various lines that are now in existence, but I cannot see how there would be any serious loss by reason of this change. In short, in my opinion, you might as well deprive a man of one of his limbs as to deprive the Wabash system of the Detroit outlet for its traffic. In regard to the subject-matter of the petition and the various points upon which we have asked advice as to the payment of interest I will state that I find the interest that will be required to be paid upon those bonds and rentals that were in existence at the time of the consolidation in 1879 amount to $2,900,577, and that the taxes in 1883 were $362,520, deducting which from the net earnings, after paying operating expenses
32 and maintenance, leaves a surplus of $599,945—that is to say,

that we should have this last sum, in case the earnings were the same in 1884 that they were in 1883, to appropriate to other purposes—in the payment of interest upon all of those securities that existed at the time of the consolidation in 1879, including the Chicago division, the Detroit and Butler bonds, and the Eel River rental.

By Mr. CHARLES S. TAUSSIG:

Q. In regard to the consolidated sinking-fund bonds of the Toledo, Wabash & Western, what portion of the Wabash road do those bonds cover?

A. I could not tell you precisely, but they cover all of the system known as the old Toledo, Wabash and Western system that existed at the date of their issue. They do not cover the Decatur and East St. Louis branch I know, and do not cover some other little portions of the road, but what portions I cannot tell.

Q. But they cover all that portion of the Toledo, Wabash & Western road which existed at the time the mortgage was created?

33 A. Yes, sir.

Q. Are there any roads other than the Wabash running east, north, or south that have Decatur as a terminal point or that run to Decatur?

A. The Peoria, Decatur & Evansville road runs through there. The Indianapolis, Decatur & Springfield road—I think it terminates there; and the Illinois Central passes through Decatur. I think that is all.

Q. What connection, if any, from Decatur to St. Louis has the Illinois Central? Has it a line of its own?

A. The Illinois Central makes its connection with St. Louis over the Vandalia road, I think about 30 or 40 miles south, and of course it would not turn its traffic off there at Decatur.

Q. It does not own the Vandalia?

A. No, sir. It uses its own line some thirty miles more than it would if it turned its traffic off at Decatur.

Q. Do you know what connection, if any, the Indianapolis, Decatur & Springfield has with St. Louis from Decatur?

34 A. They connect at a point some distance, I think, east of Decatur, with the I. & St. L. They have a traffic arrangement of some kind with the Wabash from Decatur, and use the Wabash line into St. Louis for their traffic, but they are proposing to make and have for two years been talking of making an extension to Springfield, where they would use the Chicago & Alton.

Q. How does the Peoria, Decatur & Evansville get to St. Louis?

A. It does not get here at all. Their traffic is in another direction.

By the MASTER:

Q. What are the terms, as near as you can state them, of this arrangement with the Eel River road?

A. The payments called for, as stated in the petition, were to be made, under the contract, on the 1st of June, but they can be post-

poned without forfeiture of the lease, in my opinion, until the 15th of August.

By Mr. PHILLIPS:

Q. The Central Trust Company, I see, are trustees of what is known as a mortgage over the entire road subject to prior
35 liens. What does that embrace?

A. That is known as the general mortgage or the blanket mortgage. That mortgage covers everything that existed at the time that the mortgage was issued, June, 1880. Since that time we have acquired the *the* Cairo division, and the mortgage does not cover that, and I think one or two other small acquisitions. The general mortgage describes in it what it covers.

Q. It does cover, however, a portion of those roads which your exhibits and experience show do not pay?

A. Yes, sir; it covers a portion of those.

Q. As well as those that do pay?

A. Yes, sir.

Q. How many bonds have been issued under that blanket mortgage?

A. There has been $17,000,000, and the rest of them, $33,000,000, have been reserved for retiring the older securities.

By Mr. JAMES TAUSSIG:

Q. The Decatur & St. Louis railroad part of the system is one of those parts of which you spoke as self-sustaining?

A. Yes, sir.

36 Q. How do you arrive at the result of a particular portion of the whole system that it is self-sustaining?

A. It is done by the auditor of the company. He is instructed to keep separate accounts of the earnings of all those various divisions of the road.

Q. That is to say, you keep statistics of each particular portion of the road?

A. I am informed by Mr. How that we keep statistics of certain branches separately and of the main portion of the road, both east and west of the river. The Decatur & East St. Louis is included in the statistics that we keep of the main line, and, giving it the benefit of its *pro rata* of earnings and its *pro rata* of expenses, it shows that it is paying more than its interest and taxes.

Q. Then you treat the whole through line as a unit?

A. Yes, sir; the whole through main line east and west of the river.

Q. The whole main line east of the river you treat as a unit and ascertain the earnings of each portion by prorating accord-
37 ing to mileage?

A. Yes, sir.

Q. Then each portion of the line east of the river gets an equal apportionment of *of* the earnings, without reference to the condition of the particular portion and its power of earning?

A. No, sir; each portion of the main line, not of the branches.

Q. I mean each portion of the main line?

A. Yes, sir.

Q. Therefore each mile of the whole main line is equally profitable or unprofitable?

A. Yes, sir; according to our exhibit—according to the way our account is kept.

Q. Is that in fact the case, that each mile of the whole system east of the river is equally profitable?

A. I think it is a fair basis to calculate the main line on. Of course, it would be very expensive and there would be a good deal of trouble connected with keeping the account of each separate mile or separate hundred miles.

38 Q. But are there not certain portions of the general system of the main line, say east of the river, which are more valuable and probably more profitable in themselves than other portions?

A. Undoubtedly, but I do not think the difference would be a very material one, and at certain seasons of the year one portion of the line is more profitable than other portions.

Q. Well, take, for instance, local traffic; is there any more local traffic on some portions of the whole main line than to others?

A. Yes, sir.

Q. Would not that add to the special value and profitableness of the particular portion on which the local traffic is larger than on others?

A. Yes, sir.

Q. Supposing that a portion of the whole line east of the river has or can have at certain points connections with other roads not belonging to and not constituting part of the Wabash system, does not that element add to the intrinsic value of that particular portion?

A. Yes, sir; it might.

39 Q. To come down to this particular case, is the Decatur & East St. Louis part of the road a valuable piece of railroad property?

A. I consider it exceedingly so, one of the most valuable portions of the whole system.

Q. To cut the matter short, is it not emphatically a self-sustaining piece of property?

A. Unquestionably.

Q. Is it not a piece of property which, if it were not part of the Wabash system, would under all circumstances be able to take care of itself and pay its operating expenses and interest charges?

A. That involves so serious a matter that I should not want to answer it directly. Its value consists by reason of it being the medium of taking to St. Louis the traffic that comes from the east and also from Chicago. If you should pass that traffic over another line and only allow the Decatur & East St. Louis the local traffic, it would became a very different piece of property.

40 Q. But if you were the owner of the Decatur & East St. Louis road and of nothing else, would you not find at Deca-

tur a road running to Chicago, Detroit, and different points, with which roads, whether they be part of the Wabash system or not, you could make connections and over which you could send your passengers and freight to different points?

A. Nothing like the Wabash. I think there is no road there that would take traffic east of Decatur, with the exception of the road to Indianapolis and the Illinois Central, and neither of those could afford it anything like the traffic that the Wabash system gives it. In other words, I will say that they are actually essential to each other, the Decatur line and the general Wabash system; you might as well cut off a man's right arm as to sever the Decatur & East St. Louis road from the Wabash system, in my opinion.

Q. If you were to sever the Decatur & East St. Louis road from the Wabash system, would not the consequence be that it
41 would cut off from the Wabash system the outlet to East St. Louis?

A. It would. They would have to make other arrangements, and the other lines are owned and held by competing lines.

Q. If you owned the East St. Louis and Decatur road could you not make arrangements with other roads terminating at Decatur or touching Decatur which, while not as profitable as the connection with the Wabash, would still afford to that road an outlet in different directions?

A. Undoubtedly, and advantageous ones, to-.

Q. To what points?

A. To Indianapolis and, via the Illinois Central, to other points, but nothing like as advantageous as the Wabash connection.

Q. Can you remember the excess of earnings of that particular road or portion of the main line over running expenses and interest charges?

A. I cannot, but I should say that they were more than double.

Q. Well, it is clearly a very profitable piece of property?

42 A. Yes, sir; it is like the Chicago division. They are both vital to the property—the Chicago division and the Decatur & East St. Louis division. They are absolutely vital to the property.

Q. They are part of the artery of the system?

A. Yes, sir.

Q. In addition to the Detroit connection, from Logansport to Detroit, do I understand you to say that you consider the fact that that portion of the road has not been used for the last two years to be, in your opinion, a fault of administration?

A. I do, most emphatically.

Q. The cause of which fault, if it be a fault, I suppose you are not at present able to state?

A. Well, I think it was caused by inattention and mistaken policy.

Q. And your testimony is that, notwithstanding the fact that it has not been utilized for the last two years, and notwithstanding the fact that it has not paid its expenses, either in the shape of
43 interest on the bonds or the rental, it is property sufficiently valuable to not only justify but make extremely desirable

the maintenance of it as part of the property in the hands of the receivers?

A. I should regard it in the same light, though not in so great a degree, as the loss of the Chicago division and the Decatur & East St. Louis.

Q. Then, I understand you to say that you put it in the same category as to value with the Decatur & East St. Louis and the Chicago division?

A. Yes, sir.

Q. Notwithstanding the difference in results obtained in the last two or three years?

A. Notwithstanding that. I regard it as essential for the working out of the Wabash system of railroads.

Q. When the receivers in their petition speak of the "income, rents, and profits" of the road to be applied to the payment of fixed charges they do not embrace in the term "income, rents, and
41 profits" the proceeds of any receivers' certificates the issue of which by them may have been authorized by the court, do they?

A. No, sir; they do not.

By Mr. BLODGETT:

Q. Concerning the matter of accounts, I will ask you whether, from your experience as a railroad man, it would be possible for you to ascertain and report from time to time to the court, with accurracy or approximately, the earnings of the respective divisions known as the Quincy, Missouri & Pacific; Indianapolis, Peru & Chicago; Chicago, Cincinnati & Louisville; Toledo, Peoria & Western; Havana, Rantoul & Eastern; Centerville, Moravia & Albia; the Cairo division, the Champagne, Havana & Western, and the Missouri, Iowa & Nebraska, that are reported by you in the petition as not paying anything.

A. I have no doubt of it. Part of them have been heretofore kept separate, and the others can be.

JAMES F. HOW, being duly sworn, testified as follows:

Examined by Mr. BLODGETT:

45 Q. State whether you have been officially connected with the Wabash, St. Louis & Pacific Railway Company since its organization; and, if so, what official position you have occupied.

A. I have been connected with it since its organization; some of the time as vice-president and all the time as secretary, and I have acted temporarily for several months as general manager.

Q. There are mentioned in this petition, among the bonds that were secured by mortgage upon the property of the St. Louis, Kansas City & Northern Railway Co. at the time of the consolidation, six thousand bonds known as first-mortgage bonds of the North Missouri railroad. Will you state, if you know, what property those six thousand bonds are secured on?

A. They are secured on the road from North Market street, St.

Louis, to the Missouri river opposite Kansas City, and from Moberly to the State line of Iowa.

Q. State, if you know, whether the line of road upon which you say those bonds are secured by mortgage has earned enough
46 to pay its operating expenses, cost of maintenance, and the interest upon those six thousand bonds.

A. Undoubtedly, and more than enough.

Q. There are also mentioned in the petition three thousand bonds known as the St. Louis, Kansas City & Northern real-estate mortgage bonds. State on what property those bonds are secured.

A. They are a first mortgage on the Union depot line of the road from the Union depot to Ferguson, on our shops and property in Moberly, on our property in Kansas City, and on a large portion of our equipment, and a second mortgage upon the property covered by the first mortgage; also a first mortgage on the property in St. Louis this side of North Market street.

Q. Do you know whether the earnings upon the property mortgaged to secure those two series of bonds, the six millions that you first mentioned and the three millions that you last mentioned, have been sufficient to pay the operating expenses of those lines, cost of maintenance, and the interest on the two series of bonds?

47 A. Yes, sir; they have been more than enough.

Q. There are mentioned in the petition 626 bonds, known as the St. Louis, Council Bluffs & Omaha bonds, of one thousand dollars each. State on what portion or division of the road those bonds are secured by mortgage.

A. They cover the road from Chillicothe, in Livingston county, Missouri, to Pattonsburg, Missouri, a distance of about 43 miles.

Q. State, if you know, whether the earnings on that division of the line have been sufficient to pay the operating expenses, cost of maintenance, and the interest upon the 626 bonds.

A. The earnings last year on that part of the road were sufficient to pay operating expenses, interest, and taxes, and have an amount left equal to the interest and taxes.

Q. There are mentioned in the petition 900 first-mortgage bonds of the Toledo & Illinois railway of one thousand dollars each. Do you know on what portion of the Wabash system those bonds
48 are secured?

A. They are secured on the road from Toledo to the State line of Indiana, 75½ miles.

Q. State, if you know, whether the earnings upon that portion of the line have been sufficient to pay the operating expenses, cost of maintenance, and interest upon the bonds.

A. They have been sufficient to pay interest on both the first and second mortgages upon that property, the second mortgage being to secure an indebtedness of one million dollars.

Q. State whether the 2,496 bonds known as the bonds of the Great Western Railway Co. are secured on the same line, the line last mentioned.

A. No, sir; they are secured on the main line of the road from

the State line between Indiana and Illinois to Meredosia and Naples, Illinois, $180\frac{7}{10}$ miles.

Q. I will ask you to state, if you know, whether the earnings upon that portion or division of the road have been sufficient to
49 pay operating expenses, cost of maintenance, and the interest upon all bonds and obligations, including first and second mortgages, consolidated mortgage bonds, and Wabash sevens, that were secured thereon by mortgage at the date of the consolidation of the Wabash with the St. Louis, Kansas City & Northern.

A. Yes, sir.

Q. There are mentioned in the petition 2,500 bonds of one thousand dollars each, secured by mortgage on the Lake Erie, Wabash & St. Louis railroad, and 1,500 of what are known as the Wabash & Western second-mortgage bonds, secured upon the same property. State the points between which that road is operated.

A. It is the main line of the road, extending from the western boundary of Ohio to the eastern State line of Illinois—$166\frac{1}{10}$ miles in extent. Its earnings have been sufficient to pay the operating expenses, cost of maintenance, and interest upon the bonds.

Q. There are mentioned in the petition 2,700 bonds, secured by first mortgage on the Decatur & East St. Louis division.
50 State between what points that division is.

A. The line from Decatur to East St. Louis, $108\frac{1}{2}$ miles long.

Q. State, if you know, what bonds were secured by mortgage upon that division at the time of the consolidation of the Wabash with the St. Louis, Kansas City & Northern.

A. The Decatur & East St. Louis bonds and the Wabash seven per cents., which also covered the entire system east of the river.

Q. State, if you know, whether the earnings on that part of the line have been sufficient to pay the operating expenses, cost of maintenance, and the interest upon the bonds secured thereon by mortgage.

A. Yes, sir; they have been more than sufficient.

Q. There are mentioned in the petition 609 bonds secured by mortgage on what was known as the Brunswick & Chillicothe railroad. State between what points that road is constructed.
51 A. Between Brunswick and Chillicothe, Missouri—a distance of 38 miles.

Q. State, if you know, whether the earnings on that part of the line have been sufficient to pay its operating expenses, cost of maintenance, and the interest upon those bonds.

A. It has been more than sufficient to pay all.

Q. There are mentioned here in this petition one thousand first-mortgage bonds of the St. Charles bridge, and also 777 second-mortgage bonds of the same company of $500 each, the first being for $1,000 each. State where that bridge is situated and whether it is or is not of any importance to the system of lines that constitute the Wabash, St. Louis & Pacific system.

A. It is over the Missouri river at St. Charles, and the system could not be successfully operated without a bridge there.

Q. Is it, in your opinion, of sufficient importance to justify or make it advisable to the interest of the creditors of the Wabash, St. Louis & Pacific railroad system that the interest upon those two series of bonds should be paid?

52 A. Yes, sir; I do not see how it could get along without that bridge, and the amount of interest upon the bonds is considerably less than the ordinary toll charged by bridges would amount to if charged against the traffic over the bridge.

Q. Have you any idea as to its cost?

A. It cost about two million dollars.

Q. In what manner would — have to transact the business of the road if it should lose control of the bridge, supposing you were shut off from its use entirely?

A. Before we had a bridge there the business was transferred by transfer boats, by running the cars on to the boats, but it was very unsatisfactory and put us to great disadvantage when compared with competitors who had nothing of that kind, and there were several months in the year that we were shut off from crossing by ice in the river.

Q. To go back to that system would it cost more or less and be more or less convenient than to continue the use of the bridge?

53 A. There is no comparison as to convenience between the old method and the present method of crossing by the bridge, and I think returning to the old method would reduce our business—it is hard to estimate how much, but very largely.

Q. There are mentioned in this petition 2,350 bonds upon what is known as the Omaha division of the St. Louis, Kansas City & Northern. State the division on which those bonds are secured.

A. They are secured on the road from Pattonsburg, Missouri, to Council Bluffs, Iowa. The 41 miles from Pattonsburg to the State line of Iowa belongs to the St. Louis, Kansas City & Northern, or now to the Wabash, St. Louis & Pacific railroad. The remaining portion from the State line to Council Bluffs, which is 65 miles, is leased by us. Both lines are covered by the same mortgage.

Q. State, if you know, whether the earnings on that division have been sufficient to pay the operating expenses, cost of maintenance, and the interest upon that series of bonds.

A. It has been more than enough.

Q. Was it subject to the lien of any other bonds at the

54 time of the consolidation than the 2,350 just mentioned?

A. No, sir.

Q. I will ask you concerning the 4,500 bonds secured by mortgage upon what is know- as the Chicago division. State what road constitutes that division and on what road those bonds are secured.

A. They are secured on the road formerly known as the Chicago & Strawn, from Strawn to Auburn Junction, Illinois, and on the old Chicago & Paducah railroad, from Shumway to Streator, Illinois, with branches to Effingham and Altamont.

Q. State, if you know, whether the earnings of that division have

been sufficient to pay the operating expenses, cost of maintenance, and the interest upon the 4,500 bonds secured thereon by mortgage.

A. They have been much more than sufficient.

Upon the filing of the petition, as Mr. Humphreys was about to leave for New York, the master proceeded at once to take his evidence, on Thursday afternoon, June 26th, 1884.

55 On Friday morning, June 27th, 1884, at ten o'clock, the examination of Mr. Humphreys was resumed. At this session the Central Trust Company was represented by Mr. Phillips, and Isaac H. Knox was represented by Mr. Taussig and Son.

56 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true copy of the depositions of Solon Humphreys and James F. How, accompanying report of master, filed June 28th, 1884, in case No. 2357 & 2464 (consolidated), of Central Trust Company of New York *et al.*, plaintiffs, against Wabash, St. Louis & Pacific Railway Company *et al.*, defendants, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this 31 day of December, in the year of our Lord eighteen hundred and ninety-two.

{ Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. }

A. P. SELBY,
Clerk of said Court,
By T. F. CRAWFORD, *Deputy.*

57 [Endorsed:] No. 2357 & 2464. United States circuit court, eastern division of the eastern judicial district of Missouri. Central Trust Co. of New York *et al.* against Wabash, St. Louis & Pacific R'y Co. *et al.* Duly certified copy of depositions of Solon Humphreys and James F. How, accompanying report of master, filed June 28th, 1884, in the above-entitled cause.

58 In the Supreme Court of the United States, October Term, 1892.

GEORGE I. SENEY, Trustee, Appellant,
against
THE WABASH WESTERN RAILWAY COMPANY, Appellee. } No. 181.

SIR: Please take notice that in accordance with the stipulation attached to the transcript of record in the above-entitled action, by

the terms of which either party is empowered to bring up and insert in as part of said transcript of record any other part of the record in the consolidated case of The Central Trust Company of New York and another against The Wabash, St. Louis and Pacific Railway Company and others as he may deem material, George I. Seney, trustee, appellant, deeming the same to be material, has caused to be brought up and inserted in the said transcript of record the following other parts of the record in the said consolidated cause, to wit:

The testimony, including the depositions of Solon Humphreys and James F. How, accompanying the report of E. T. Allen,
59 Esq., master in chancery, filed June 28th, 1884.

Yours, &c., THEODORE SHELDON,
Attorney for Appellant, 99 Randolph Street, Chicago.

Dated December 10th, 1892.

To Wells H. Blodgett, Esq., attorney for appellee.

Received a copy of the foregoing notice this — day of December, 1892.

WELLS H. BLODGETT,
Attorney for Appellee.

60 [Endorsed:] Case No. 13,771. Supreme Court U. S., October term, 1892. Term No., 181. George I. Seney, trustee, appellant, *vs.* The Wabash Western Railway Company. Notice and addition to record. Filed Feb. 4, 1893.

Addition to Record, Case No. 13,771.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 26.

GEORGE I. SENEY, TRUSTEE, APPELLANT,

vs.

THE WABASH WESTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 27, 1893.

1 Nos. 2357 & 2464, Consolidated.

United States Circuit Court, Eastern District of Missouri.

CENTRAL TRUST COMPANY OF NEW YORK *et al.*
against
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*

Duly certified copy of the petition of receivers for leave to issue certificates, &c., in the above-entitled cause.

2 In the Circuit Court of the United States for the Eastern District of Missouri, March Term, A. D. 1884.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, Complainant,
against
THE CENTRAL TRUST COMPANY OF NEW YORK, James Cheney, The Mercantile Trust Company of New York, and Others, Defendants.
In Chancery.

Petition of Receivers for Leave to Issue Receivers' Certificates to Pay for Supplies, Wages of Employés, Taxes, Mechanics' Liens, etc.

Filed June 6, 1884.

Now, at this day, come Solon Humphreys and Thomas E. Tutt, receivers, and respectfully state and show to this honorable court that at the time they took possession of the property under a former order of this court there was, and is now, due to employés of said company for services and labor in the various departments
3 thereof, such as trackmen, engineers, firemen, machinists, trainmen, station and yard laborers, bridge-builders and mechanics, together with the salaries due to officers, as shown by rolls and vouchers on file in the offices of the treasurer and auditor of the company, and from estimates made by said treasurer and auditor of the amounts now due for the month of May, and for which rolls and vouchers have not yet been prepared and approved in and by the respective departments, all of which accrued during the six months prior to the appointment of your petitioners as receivers, an amount in excess of one million dollars ($1,000,000).

That there were taxes due and unpaid on the various lines and property of said company in this and other States the sum of one hundred and seventy-four thousand dollars ($174,000).

That there was due and owing for supplies furnished said company within six months prior to May 27, A. D. 1884, a sum in excess of seven hundred and fifty thousand dollars ($750,000), and that at least two hundred thousand dollars of said last-mentioned amount is required to be paid without delay, in order to prevent litigation and the filing of applications for the enforcement of mechanics' liens against the railroad of said company; and your petitioners

further state that Flynn & Guggerty, on the 21st day of December, A. D. 1883, recovered a judgment in the circuit court of Polk county, in the State of Iowa, against said railway company for the sum of thirty thousand one hundred and ten dollars and thirty-two cents ($30,110.32), which judgment has since been affirmed in the supreme court *in* the State of Iowa; and that the cause of action whereon said plaintiffs recovered said judgment arose out of the construction of that portion of the railroad of said company extending from the city of Albia to the city of Des Moines, in said State of Iowa,
4 and that by the judgment and decree of said court in said cause the judgment aforesaid became and is a first lien upon that portion of the road above described, and should be paid without delay to prevent costs and applications on the part of said plaintiffs for the enforcement of said decree.

They further state that since they took charge of said property, as receivers aforesaid, they have, in obedience to the order of that court, in operating said railway, found it necessary to employ substantially the same force of laborers, engineers, foremen, machinists, train, station and yard laborers and clerks, etc., and in order that said property may be preserved, and that the business of the railway may be properly conducted, and not suffer detriment in their hands, it will be necessary that the foregoing accounts be paid; that the incoming rents and profits derived and received by them are not now sufficient, and, as your petitioners are informed and believe, the same will not, for the next six months, be more than sufficient to pay the necessary expenses to be by them incurred in the operation of the road, and the fixed charges thereon, which consist of interest on the underlying first-mortgage bonds, taxes, rentals of bridges, tracks and terminal facilities, all of which will mature and of necessity must be paid for the preservation of said property during such time.

Wherefore your receivers state and respectfully show that to preserve the said property and pay the foregoing amounts it is necessary, as your petitioners believe, to have, in addition to the revenues to be derived from the operation of said railroad, the sum of two million dollars.

Your petitioners, therefore, pray the order and direction of this court in the premises, and that they be allowed to issue
5 debentures or certificates, in denomination respectively of five thousand dollars, and ten thousand dollars, and twenty thousand dollars each, with which to borrow or raise the money necessary to pay off and discharge the foregoing debts and accounts, and that the said debentures or certificates be negotiable in form, bear not to exceed seven per cent. interest per annum from their date until paid, to be made due and payable within not less than one year or more than two years from the date of their issue, and that they be disposed of from time to time, at not less than their par value, and the proceeds used by your petitioners in the payment of such of the indebtedness herein set forth as the court may be pleased to order.

That said receivers be directed to pay said debentures or certifi-

cates, and that they be made and constituted a first and best lien upon all the property of every nature and description of said railway company, and that the earnings of said railway, after deducting the operating expenses and the expense of receivership, be pledged for the payment of the principal and interest of said debentures or certificates, according to their tenor and effect.

And your petitioners further pray that your honors direct the form of such debentures or certificates, and for such other orders in the premises as to the court may seem proper.

SOLON HUMPHREYS AND
THOMAS E. TUTT, *Receivers*,
By WELLS H. BLODGETT, *Attorney*.

6 STATE OF MISSOURI, } ss:
City of St. Louis, }

Solon Humphreys and Thomas E. Tutt, being first duly sworn, upon their oaths respectively state that the several matters and things set forth in the above and foregoing petition are true to the best of their knowledge and belief.

SOLON HUMPHREYS,
THOMAS E. TUTT,
Receivers.

Subscribed and sworn to before me, the undersigned notary public in and for the city of St. Louis, State of Missouri, this 4th day of June, A. D. 1884.

In witness whereof I have hereunto set my hand and official seal the day and year last aforesaid. My commission expires on the 29th of June, 1885.

[NOTARIAL SEAL.] GEO. S. GROVER,
Notary Public, City of St. Louis, State — Missouri.

7 UNITED STATES OF AMERICA, } ss:
Eastern Division, Eastern District of Missouri, }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern district of Missouri, do hereby certify the writing hereto attached to be a true copy of the petition of receivers for leave to issue receivers' certificates to pay for supplies, wages of employés, taxes, mechanics' liens, etc., in case No. 2357, of The Central Trust Company of New York and others, complainants, against The Wabash, St. Louis & Pacific Railway Company and others, defendants, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 30th day of August, in the year of our Lord eighteen hundred and ninety-three.

{ Seal of the United States Circuit Court, Eastern Division }
{ of the Eastern Judicial District of Missouri. }

A. P. SELBY,
Clerk of said Court.

8 Nos. 2357 & 2464, Consolidated.

United States Circuit Court, Eastern District of Missouri.

CENTRAL TRUST COMPANY OF NEW YORK *et al.*
against
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*

Duly certified copy of Exhibit 10 (Statement A) to master's report, &c., in the above-entitled cause.

9 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

CENTRAL TRUST COMPANY OF NEW YORK
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY CO. } 2357.

EXHIBIT 10 (STATEMENT A).

Receivers' Certificates Issued under Order of Court, Dated June 6, 1884, Outstanding November 24, 1885.

No.	Name.	Address.	Rate of int.	Date of issue.	Date due.	Am'nt.
1	D. F. Merritt	New York	7%	Aug. 14, '84	Aug. 14, '85	$5,000
2	Eliza M. Morgan	" "	"	" " "	" " "	5,000
4	Charles Scott	Philadelphia	"	Nov. 26, "	Nov. 26, '86	5,000
5	Detroit Union R. R. Depot & Station Co.	Detroit, Mich	"	" 24, "	" 24, "	5,000
6	H. F. Blood	New York	"	" 1, "	" 1, '85	5,000
7	Detroit Union R. R. Depot & Station Co.	Detroit, Mich	"	" 24, "	" 24, '86	5,000
8	" " "	" "	"	" " "	" 24, '86	5,000
9	Riverton Coal Co.	Springfield, Ill	"	" " "	" " "	5,000
10	" "	" "	"	" " "	" " "	5,000
11	C. E. Briant	Huntington, Ind	"	Dec. 1, "	Dec. 1, "	5,000
12	Signal Oil Works	Franklin, Pa	"	Nov. 29, "	Nov. 29, "	5,000
13	" "	" "	"	" " "	" " "	5,000
14	" "	" "	"	" " "	" " "	5,000
15	" "	" "	"	" " "	" " "	5,000
16	" "	" "	"	" " "	" " "	5,000
17	Charles Ridgley	Springfield, Ill	"	" " "	" " '85	5,000
18	" "	" "	"	" " "	" " '86	5,000
19	" "	" "	"	" " "	" " "	5,000
20	Cleveland City Forge & Iron Co.	Cleveland, Ohio	"	" " "	" " "	5,000
10						
21	Alex. M. White	New York	7%	Dec. 1, '84	Dec. 1, '85	5,000
22	" "	" "	"	" " "	" " "	5,000
23	" "	" "	"	" " "	" " "	5,000
24	" "	" "	"	" " "	" " "	5,000
25	" "	" "	"	" " "	" " "	5,000
26	" "	" "	"	" " "	" " "	5,000

Exhibit 10—Continued.

No.	Name.	Address.	Rate of int.	Date of issue.	Date due.	Am'nt.
27	Alex. M. White	New York	7%	Dec. 1, '84	Dec. 1, '85	$5,000
28	" "	" "	"	" " "	" " "	5,000
29	" "	" "	"	" " "	" " "	5,000
30	" "	" "	"	" " "	" " "	5,000
31	Union National bank	" "	"	" " "	" " "	5,000
32	" " "	" "	"	" " "	" " "	5,000
33	" " "	" "	"	" " "	" " "	5,000
34	C. E. Briant	" "	"	" " "	" " "	5,000
35	" "	Huntington, Ind	"	" 6, "	" 6, '86	5,000
36	" "	" "	"	" " "	" " "	5,000
37	F. S. Giddings	" "	"	" " "	" " "	5,000
38	A. Wilhelm & Sons	Fort Wayne, Ind	"	" " "	" " "	5,000
39	" "	Defiance, Ohio	"	" " "	" " "	5,000
40	Union Stock Yards & Transit Co	" "	"	" " "	" " "	5,000
41	Logan & Kirkham	Chicago, Ill	"	" 8, "	" 8, "	5,000
42	E. H. Linley	Glenwood, Mo	"	" 31, "	" 31, "	5,000
43	New York Central & Hudson River R. R. Co	St. Louis, Mo	"	Jan. 2, '85	Jan. 2, '87	5,000
44	Burnham, Parry, Williams & Co	New York	"	" " "	" " "	5,000
45	Chicago, Burlington and Quincy R. R. Co	" "	"	" " "	" " "	5,000
46	Union Pacific R'y Co	Chicago, Ill	"	" 8, "	" 8, "	5,000
47	St. Louis, Keokuk and Northwestern R'y Co	Omaha, Neb	"	" " "	" " '86	5,000
48	H. L. Fox and Broderic & Bascome	Keokuk, Iowa	"	" 21, "	" 21, '87	5,000
49	Ellsworth Coal Co	St. Louis, Mo	"	Feb. 5, "	Feb. 5, "	5,000
50	J. C. Peasley	Springfield, Ill	"	" 11, "	" 11, '86	5,000
51	Chicago Varnish Co	Chicago, Ill	"	" 18, "	" 18, '87	5,000
52	Signal Oil Works	" "	"	" 20, "	" 20, '86	5,000
53	Rand, McNally & Co	Franklin, Pa	"	" 26, "	" 26, '87	5,000
54	F. W. Jesup & Co	Chicago, Ill	"	Mar. 3, "	Mar. 3, '86	5,000
55	Sleeper & Whiton	New York	"	Jan. 1, "	Jan. 1, "	5,000
56	Rust & Coolidge	Chicago, Ill	"	Mar. 14, "	Mar. 14, '87	5,000
57	Union Depot Co., Kansas City, Mo	" "	"	" 19, "	" 19, '86	5,000
		Kansas City, Mo	"	" 21, "	" 21, '87	5,000

11							
58	Burnham, Parry, Williams & Co.	New York	7%	Mar. 25, '85	Mar. 25, '86		5,000
59	Burnham, Parry, Williams & Co.	" "	"	" " "	" " "		5,000
60	Burnham, Parry, Williams & Co.	" "	"	" " "	" " "		5,000
61	Burnham, Parry, Williams & Co.	" "	"	" 30, "	" 30, "		5,000
62	Burnham, Parry, Williams & Co.	" "	"	" " "	" " "		5,000
63	Burnham, Parry, Williams & Co.	" "	"	" " "	" " "		5,000
64	Fayette Smith and Eddy & Smith	Maryville, Mo.	"	" " "	" " '87		5,000
65	Chicago Varnish Co.	Chicago, Ill.	"	Ap'l 7, "	Ap'l 7, '86		5,000
66	John Ryan	Neapolis, Ohio	"	" 13, "	" 13, '87		5,000
67	E. V. W. Rossiter	New York	"	" 21, "	" 21, "		5,000
68	Wager Swayne	" "	"	" 22, "	" 22, "		5,000
69	John E. Davidson	Pittsburg, Pa.	"	" " "	" " "		5,000
70	" "	" "	"	" " "	" " "		5,000
71	H. McFarland	Omaha, Neb.	"	" " "	" " "		5,000
72	Wm. Kayser	Baltimore, Md.	"	" 15, "	" 15, "		5,000
73	Mr. McNally	Chicago, Ill.	"	" " "	" " "		5,000
74	F. W. Stahl	Litchfield, Ill.	"	" 1, "	" 1, '86		5,000
75	E. P. Leigh	St. Louis, Mo.	"	May 19, "	May 19, '87		5,000
76	Frank E. Snow	Detroit, Mich.	"	" " "	" " "		5,000
77	E. H. Linley	St. Louis, Mo.	"	" 25, "	" 25, "		5,000
78	A. Bowen and Pickler & Crebs	Kirksville, Mo.	"	" 27, "	" 27, "		5,000
79	John Ferguson	Fort Wayne, Ind.	"	" " "	" " "		5,000
80	New York Locomotive Works	New York	"	" 28, "	" 28, '86		5,000
81	New York Locomotive Works	" "	"	" " "	" " "		5,000
82	T. H. Stryker	Rome, N. Y.	"	June 13, "	June 13, "		5,000
83	Joseph Dickson	St. Louis, Mo.	"	" 16, "	" 16, '87		5,000
84	" "	St. Louis, Mo.	"	" " "	" " "		5,000
85	H. S. Allen	Cleveland, Ohio	"	" 26, "	" 26, "		5,000
86	Himebaugh, Merriam & Co.	Omaha, Neb.	"	" 30, "	" 30, '86		5,000
87	G. H. Nettleton	Kansas City, Mo.	"	July 7, "	July 7, '87		5,000
88	R. H. Parks	St. Charles, Mo.	"	June 1, "	June 1, '86		5,000
89	" "	St. Charles, Mo.	"	" " "	Dec. 1, "		5,000
12							
90	R. H. Parks	St. Charles, Mo.	7%	June 1, '85	June 1, '87		5,000
91	" "	St. Charles, Mo.	"	July 1, '85	July 1, '86		5,000
92	D. O. Settlemire	Litchfield, Ill.	"	" 10, "	" 10, '87		5,000

No.	Name.	Address.	Rate of int.	Date of issue.	Date due.	Am'nt.
93	T. H. Stryker	Rome, N. Y.	7%	July 14, '85	July 14, '87	$5,000
94	" "	" "	"	" " "	" " "	5,000
95	S. H. Paine	Cleveland, Ohio.	"	" 16, "	" 16, "	5,000
96	" "	Cleveland, Ohio.	"	" " "	" " "	5,000
97	" "	" "	"	" " "	" " "	5,000
98	" "	" "	"	" " "	" " "	5,000
101	M. Sawyer	St. Louis, Mo.	"	July 18, "	" 18, '86	5,000
102	" "	" "	"	" " "	" " "	5,000
103	" "	" "	"	" " "	" " "	5,000
104	" "	" "	"	" " "	Jan. " '87	5,000
105	" "	" "	"	" " "	July " "	5,000
106	Geo. F. Williams.	Chicago, Ill.	"	" 1, "	" 1, "	5,000
107	Geo. F. Williams.	" "	"	" " "	" " "	5,000
108	Geo. F. Williams.	" "	"	" " "	" " "	5,000
109	O. Duck	Hannibal, Mo.	"	Aug. 7, "	Aug. 7, "	5,000
110	James Tiernan	St. Louis, Mo.	"	" 15, "	" 15, "	5,000
111	" "	St. Louis, Mo.	"	" " "	" " "	5,000
112	J. G. Miller	Detroit, Mich.	"	" 19, "	" 19, "	5,000
113	Charles Scott.	Philadelphia.	"	" " "	" " "	5,000
114	J. W. Chace	Shenandoah, Ia.	"	" 24, "	" " '86	5,000
115	J. G. Miller	Detroit, Mich.	"	July 25, "	July 25, '87	5,000
116	James McDonald.	Cincinnati, Ohio.	"	Aug. 26, "	Aug. 26, "	5,000
117	" "	Cincinnati, Ohio.	"	" " "	" " "	5,000
118	A. Soper	Chicago, Ill.	"	Sept. 23, "	Sept. 23, '86	5,000
119	J. G. Miller	Detroit, Mich.	"	" " "	" " '87	5,000
120	R. C. McKinney	Hamilton, Ohio.	"	" 24, "	" 24, '86	5,000
121	J. G. Miller	Detroit, Mich.	"	Oct. 23, "	Oct. 23, '87	5,000
122	E. Wilder.	Topeka, Kans.	"	Nov. 12, "	Nov. 12, "	5,000
123	J. G. Miller	Detroit, Mich.	"	" 19, "	" 19, "	5,000
124	F. W. Rotger	Mt. Sterling, Ill.	"	" 24, "	" 24, '86	5,000
125	" "	" "	"	" " "	" " "	5,000

126	James Hanna	St. Louis, Mo.	"	" " "	" " '87	5,000
13						
1	Alex. M. White	New York	7%	Dec. 1, '84	Dec. 1, '85	10,000
2	" "	" "	"	" " "	" " "	10,000
3	" "	" "	"	" " "	" " "	10,000
4	" "	" "	"	" " "	" " "	10,000
5	" "	" "	"	" " "	" " "	10,000
6	Peoria and Pekin Union R'y Co.	Peoria, Ill.	"	" 11, "	" 11, '86	10,000
7	New York Central & Hudson River R. R. Co.	New York	"	Jan. 2, '85	Jan. 2, '87	10,000
8	Burnham, Parry, Williams & Co.	" "	"	" " "	" " "	10,000
9	Union Pacific R'y Co.	Omaha, Neb.	"	" 6, "	" 6, '86	10,000
10	Union Pacific R'y Co.	" "	"	" " "	" " "	10,000
11	J. H. Wyeth	Franklin, Pa.	"	April 30, "	April 30, '87	10,000
12	T. H. Stryker	Rome, N. Y.	"	June 13, "	June 13, '86	10,000
13	T. A. Meysenberg	St. Louis, Mo.	"	" 18, "	" 18, "	10,000
14	J. G. Miller	Detroit, Mich.	"	" 29, "	" 29, "	10,000
15	T. H. Stryker	Rome, N. Y.	"	" " "	" " '87	10,000
16	D. O. Settlemire	Litchfield, Ill.	"	July 10, "	July 10, "	10,000
17	E. Wilder	Topeka, Kans.	"	" 20, "	" 20, "	10,000
18	T. H. Stryker	Rome, N. Y.	"	Aug. 19, "	Aug. 19, '86	10,000
19	Charles Scott	Philadelphia	"	" 21, "	" 21, '87	10,000
20	James McDonald	Cincinnati, Ohio	"	" 24, "	" 24, "	10,000
7	Detroit Union R. R. Depot and Station Co.	Detroit, Mich.	"	April 7, '85	Ap'l 7, '86	20,000
8	Detroit Union R. R. Depot and Station Co.	Detroit, Mich.	"	" " "	" " "	20,000
9	Detroit Union R. R. Depot and Station Co.	Detroit, Mich.	"	" " "	" " "	20,000
21	J. H. Wyeth	Franklin, Pa.	"	" 30, "	" 30, '87	20,000
22	" "	" "	"	" " "	" " '87	20,000
23	James Hanna	St. Louis, Mo.	"	Nov. 24, "	Nov. 24, "	20,000
24	" "	" "	"	" " "	" " "	20,000
	Total					955,000

14 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern district of Missouri, do hereby certify the writing hereto attached to be a true copy of the "Exhibit 10 (Statement A), receivers' certificates issued under order of court dated June 6, 1884, outstanding November 24, 1885," attached to master's report filed January 4, 1886, in pursuance of order November 9, 1885, in case Nos. 2357 & 2464, consolidated, of The Central Trust Company of New York and others, complainants, against The Wabash, St. Louis & Pacific Railway Company and others, defendants, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this second day of September, in the year of our Lord eighteen hundred and ninety-three.

(Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri.)

A. P. SELBY,
Clerk of said Court,
By —— ——, *Deputy.*

15 In the Supreme Court of the United States.

GEORGE I. SENEY, Trustee, Appellant,
against
THE WABASH WESTERN RAILWAY COMPANY, Appellee.

October Term, 1893.
No. 181.

SIR: Please take notice that, in accordance with the stipulation attached to the transcript of record in the above-entitled action, by the terms of which either party is empowered to bring up and insert in as part of said transcript of record any other part of the record in the consolidated case of The Central Trust Company of New York and another against The Wabash, St. Louis and Pacific Railway Company and others as he may deem material, George I. Seney, trustee, appellant, deeming the same to be material, has caused to be brought up and inserted in the said transcript of record the following other parts of the record in the said consolidated cause, to wit:

1. The petition of the Wabash receivers for leave to issue receivers' certificates, and the order of the court thereon entered 6th of June, 1884.

16 2. Exhibit 10 (Statement A) of the master's report, filed 4th of January, 1886.

Yours, &c., THEODORE SHELDON,
Attorney for Appellant, 99 *Randolph Street, Chicago.*

Dated September 4th, 1893.

To Wells H. Blodgett, Esq., attorney for appellee.

Received a copy of the foregoing notice this — day of September, 1893.

——— ———,
Attorney for Appellee.

STATE OF MISSOURI, }
City of St. Louis, } ss:

Charles Claflin Allen, being duly sworn, on his oath says that he served the above and foregoing notice in the city of St. Louis, State of Missouri, on the 12th day of September, 1893, by delivering a true copy of the same to B. C. Winston, assistant to Wells H. Blodgett, at the office of said Wells H. Blodgett, room 704, Commercial building, southeast corner of Sixth and Olive streets, in said city of St. Louis.

CHAS. CLAFLIN ALLEN.

Subscribed and sworn to before me this 12th day of September, 1893.

My term will expire Dec. 7th, 1896.

[Seal of Andrew Johnson, Notary Public, City of St. Louis, Missouri.]

ANDREW JOHNSON,
Notary Public, City of St. Louis, Mo.

17 Nos. 2357 & 2464, Consolidated.

United States Circuit Court, Eastern District of Missouri.

CENTRAL TRUST COMPANY OF NEW YORK *et al.*
against
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*

Duly certified copy of the — in the above-entitled cause.

18 In the Circuit Court of the United States for the Eastern District of Missouri, March Term, A. D. 1884.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, Complainant,
against
THE CENTRAL TRUST COMPANY OF NEW YORK, James Cheney, The Mercantile Trust Company of New York, and Others, Defendants. } In Chancery.

Report of Master and Order of Court Thereon June 30, 1884, Concerning Payment of Rental Due June 1, 1884, on Eel River Railroad.

To the honorable judges of said court:

In the matter of the petition of Solon Humphreys and Thomas E. Tutt, receivers of all the property, rights and credits of the

Wabash, St. Louis and Pacific Railway Company, wherein they pray for the advice of this court with respect to the following, among other matters, to wit:

19 "3rd. As to what they shall do with respect to the payment of rental upon the line extending from Logansport to Butler, in the State of Indiana."

"4th. As to what they shall do with respect to the payment of interest upon the bonds secured by mortgage on the line extending from Butler, Indiana, to Detroit Junction, in the State of Michigan."

I submit the following report:

The following facts appear from the pleadings and exhibits on file and testimony already taken:

In August, 1879, before its consolidation with the St. Louis, Kansas City and Northern Railway Company, the Wabash Railway Company acquired, by lease, the Eel River railroad, extending from Logansport, Indiana, to Butler, in the same State.

Some time in 1881 the consolidated corporation acquired, by a new consolidation, the Detroit, Butler and St. Louis railroad, extending from Butler, in the State of Indiana, to Detroit, in the State of Michigan.

These two roads, acquired as above stated, constitute what is known as the Detroit division of complainant corporation, extending in a continuous and direct line from Logansport, Indiana, to Detroit, Michigan. They give the Wabash system of roads an independent connection at Detroit with lines from the east reaching that point. Until this connection was effected the system had no outlet to the east except at Toledo. From Toledo the connecting lines eastward constituted, and still constitute, parts of competing lines, and were and are controlled by hostile interests.

20 As another reason for the independent connections between Logansport and Detroit by way of Butler, it is stated that in seasons of large grain movements eastward the old line between Logansport and Toledo and the terminal facilities at Toledo were insufficient, and that for several months of the year great delays in shipment, great risk in handling trains, and great loss in traffic were experienced. It therefore became a question whether to double-track the old line from Logansport to Toledo, or to secure an independent line from Logansport, by way of Butler, to Detroit.

The latter course was determined upon. It would accomplish the two objects, viz: secure independent non-competing eastern connections and relieve the Toledo division from glut in seasons of active business.

As a part of the same plan complainant corporation secured, by rental, terminal facilities in the city of Detroit at a considerable annual cost, the details of which have not yet been investigated.

The lease of the Eel River railroad, in addition to the payment of taxes, maintenances, etc., calls for the payment of a quarterly rental, payable on the first days of December, March, June and September, after September 1, 1881, of $27,920, or $111,680 per

annum; and after September 1, 1884, of a quarterly rental of $31,410, or $125,640 per annum. The lease also requires on the first day of September in each year the payment of $1,200, in addition to the quarterly rental above stated.

The lease provides that in the event of default in payment of any installment of the rent, and the continuance of default for
21 thirty days, "it shall be lawful for the party of the first part, at its option, by its duly constituted agent, to enter upon and assume possession without process of law" of said road and equipment, and that "thereupon all right and interest of the party of the second part in the demised premises shall cease."

At the time of the acquisition of the Detroit, Butler and St. Louis railroad, as above stated, complainant corporation executed a mortgage of that road to secure two thousand and fifty-two bonds, of one thousand dollars each, dated July 1st, 1881, bearing six per cent. interest, payable semi-annually on the first days of January and July in each year. These bonds are listed in Exhibit "A" of the bill of complaint as "first-mortgage bonds, Detroit division." It is stated in the exhibit that the complainant is not paying interest on 199 of these bonds, from which it may be inferred that only 1,853 of the 2,052 bonds have been negotiated. The annual interest charge, therefore, under the first mortgage upon what was formerly the Detroit, Butler and St. Louis railroad is $111,180. Exclusive, then, of cost of maintenance, taxes, and operating expenses, and of terminal facilities at Detroit, the annual expense to the complainant corporation of the Detroit division is as follows:

Rental of Eel River road	$111,680 00	
	1,200 00	
Interest		111,180 00
		$224,060 00

After September 1, 1884, these annual charges for rental and interest will be:

Rental of Eel River railroad	$125,640 00	
	1,200 00	
Interest		111,180 00
		$238,020 00

22 The earnings of the Detroit division from Logansport to Detroit have never been sufficient to pay its cost of maintenance, operating expenses and taxes, to say nothing of Eel River rental, and interest charges as above stated.

In 1883 the earnings of the Eel River road fell short of the cost of maintenance and operating expenses by the sum of	$44,568 00
Add rental and taxes	133,523 00
Total deficiency for 1883	$178,091 00

In the same year the earnings of the Detroit, Butler and St. Louis road fell short of cost of maintenance and operating expenses by the sum of.....	$54,391 00
Add interest and taxes.....	123,815 00
Total deficiency for 1883.....	$178,206 00
To the aggregate of these two amounts, viz:.....	$356,279 00
Should be added rental of terminal facilities at Detroit, which for 1883 were.....	68,556 00
Thus giving the amount of.....	$424,853 00

as the expenditures on the Detroit division over and above receipts therefrom for the year 1883.

Two explanations are given for this large deficiency of earnings. First, short crops for two years past in the country tributary to the Wabash system, and the consequent falling off of the traffic. Second, that for some reason not stated, the Detroit division has not yet been utilized for through passenger or freight traffic by way of Detroit. Notwithstanding the supposed advantages of independent Eastern connections at Detroit, the large obligations incurred to secure them, and the large payments made during the last three years, all, or nearly all, the through business has been done over the old line through Toledo, connecting there with competing lines eastward.

23

Such being, in general terms, the situation, the receivers ask instructions of the court as to the payment of rental to the Eel River road, one instalment of which, amounting to $27,920, is nearly thirty days past due; and as to the payment of interest maturing July 1st, proximo, on the bonds above described, amounting to the sum of $55,590.

It is insisted, with great earnestness, by Mr. Humphreys, in his testimony, that the forfeiture of the lease of the Eel River road would work serious and irreparable injury to the railroad system of complainant. The same view is advanced in a memorandum prepared by Mr. James F. Joy of Detroit, and herewith submitted. They seem to entertain no doubt whatever upon this point, in the face of the facts already stated, showing the enormous drain in operating expenses, rentals and interest over and above its earnings, which the Detroit division has thus far made upon the resources of the complainant.

At the present stage of the investigation it is impossible to say that their views are not correct. But at the same time, there is no satisfactory explanation yet given, why the Detroit division has not been used for the purpose for which it is claimed to have been acquired at so large an expense, viz., for through freight and passenger trains by way of Detroit. It may yet appear that there are disadvantages connected with such use of the Detroit division, which are not apparent to Mr. Humphreys or Mr. Joy, disadvantages which have presented themselves to the managers of the system hereto-

fore, and which may explain and excuse their course of
24 action. In my judgment the question of retaining the Detroit division, considering all the facts thus far elicited, while very important and pressing, is not one which can be satisfactorily determined at this time. An investigation should be had of the matter much more complete than has been possible since the receivers' petition was filed. This investigation, in my opinion, should be conducted after due notice to all the defendants in the case, including the Eel River Railroad Company, giving all parties who have any interest in the question an opportunity to be heard.

At this time such an investigation is impossible. Comparatively few of the defendants have entered their appearance in this case, and fewer still are represented by local counsel.

But in view of the fact that the payment of comparatively a small sum of money, $27,920, on the first of July proximo, will save the forfeiture of the lease of the Eel River road, thus giving time until October 1st for a more complete examination of the question of retaining the Detroit division, and an opportunity for all parties interested to be heard, I recommend that the following order be entered at this time:

It is ordered that the receivers herein, from the incoming rents and profits of the property in their charge, after meeting such other obligations as they have been directed to discharge by the former orders of this court, pay from whatever balance may remain in their hands, the rental which became due June 1st, 1884, to the Eel River Railroad Company amounting to the sum of twenty-seven thousand nine hundred and twenty ($27,920) dollars.

With regard to the interest maturing July 1st and subse-
25 quently, on the 1,853 bonds secured by mortgage on what was formerly the Detroit, Butler and St. Louis railroad, I recommend, for the reasons given above, that no order be entered at present.

EDMUND T. ALLEM,
Special Master.

MEMORANDUM.—Report filed and approved June 30, 1884.

26 In the Circuit Court of the United States for the Eastern District of Missouri.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, Complainant,
against
THE CENTRAL TRUST COMPANY OF NEW YORK, James Cheney, The Mercantile Trust Company of New York, and Others, Defendants. } In Chancery.

Order Confirming Master's Report on Petition of Receivers for Leave to Pay Balance of $112,000 Due on Wabash Equipment.

NOVEMBER 29, 1884.

The report of the master, heretofore filed, on the petition of the receivers to pay the balance due on "Wabash equip-

27 ment," coming on to be heard, and the court being fully advised thereof, it is ordered that said report be and it is hereby in all things confirmed.

And thereupon it is ordered that the receivers herein, from the incoming rents and profits of the property in their charge, after meeting such other obligations as they may have been directed to discharge by the former orders of this court, pay from whatever balance may remain in their hands, to Alexander M. White, the sum of one hundred and twelve thousand dollars, with interest at the rate of seven per cent. from the first day of July, 1884, the same being the amount remaining due said White, and secured to him by the terms of a certain chattel mortgage of rolling stock made by the Wabash Railway Company, bearing date October 17th, 1878.

28 In the Circuit Court of the United States for the Eastern District of Missouri, September Term, A. D. 1884.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, Complainant, *vs.* THE CENTRAL TRUST COMPANY OF NEW YORK, James Cheney, The Mercantile Trust Company of New York, and Others, Defendants.	In Chancery.

Solon Humphreys, Thomas E. Tutt, receivers.

Order on Receivers to Pay Certain Judgments in the State of Iowa.

JANUARY 12TH, 1885.

Ordered, that the receivers herein from the incoming rents and profits of the property in their charge, after meeting such other obligations as they have been directed to discharge by the

29 former orders of this court, pay, as soon as practicable, all judgments, with lawful interest thereon, together with costs, rendered in the State of Iowa against complainant, or against the receivers herein, on accounts of any injuries to persons or property in said State, and adjust and pay, on approval of the master herein, all claims of the character aforesaid, which accrued against complainant prior to the appointment of the receivers herein, upon which actions have not been brought, and which may, if prosecuted to judgment, under the statutes of said State, become first liens upon the property in their charge.

30 In the Circuit Court of the United States for the Eastern District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*, Complainants, *vs.* THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants.	Nos. 2357 and 2464. Consolidated Cause.

Order on Master's Report on the Report of Receivers for the Quarter Ending August 31, 1884.

APRIL 13, 1885.

The master's report on the report of the receivers for the quarter ending August 31st, 1884, heretofore filed herein, having been fully considered by the court, it is ordered that said report be, and it is hereby, in all things confirmed; and thereupon it is ordered that the action of the receivers in acquiring lots Nos. 401 and 402, in block No. 34, in the city of Ottumwa, Iowa, for the sum of twenty-one hundred ($2,100.00) dollars; lots Nos. 7, 8, and 9, in block 29, in the city of Urbana, Illinois, for the sum of fifteen hundred ($1,500.00) dollars, and a lot in the town — Marshfield, In-
31 diana, lying east of block 1 and north of and adjoining the right of way of the railroad in their charge, for the sum of one hundred ($100.00) dollars, be and the same is hereby approved, and that James F. How, to whom the deed to said several properties has been made, hold the title to the same as trustee, subject to the further orders of this court.

And it is further ordered that the receivers be and they are hereby allowed the payments made by them on sundry coupons past due at the time of their appointment, amounting in the aggregate to the sum of thirteen thousand seven hundred and twenty ($13,720.00) dollars.

And it is further ordered that the receivers pay, out of the incoming rents and profits of the property in their charge, as they may be presented for payment, all coupons which matured prior to their appointment, of bonds the coupons of which, maturing since their appointment, they have been instructed to pay, and that, until otherwise directed, they shall pay no coupons which matured prior to June 1st, 1884, of bonds the coupons of which matured June 1st, 1884, or since that date they have not been instructed to pay.

And it is further ordered that the several payments made by the receivers to the New York and Pacific Car Trust Association, namely, the sums of $5,488.64, $39,527.50, $13,650.00, and $39,527.50, under and pursuant to the terms of certain car-trust agreements with said association, be and the same are hereby approved.

And it is further ordered that until the further orders of this court the receivers are authorized to pay the interest and other expenses of said car trust, as they may from time to time mature under the agreements with said association.

32 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be true copies of master's report & order approving same, June 30, 1884; order confirming master's report, Nov. 29, 1884; order of January 12, 1885, and order of April 13, 1885, in case Nos. 2357 & 2464, consolidated, of The Central Trust Company of New York and others, complainants, against The Wabash, St. Louis & Pacific Railway Company and others, defendants, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 19th day of September, in the year of our Lord eighteen hundred and ninety-three.

(Seal of the United States Circuit Court, Eastern Division
(of the Eastern Judicial District of Missouri.

A. P. SELBY,
Clerk of said Court.

33 In the Supreme Court of the United States.

GEORGE I. SENEY, Trustee, Appellant,
against
THE WABASH WESTERN RAILWAY COMPANY, Appellee.
} October Term, 1892. No. 181.

SIR: Please take notice that in accordance with the stipulation attached to the transcript of record in the above-entitled action, by the terms of which either party is empowered to bring up and insert in as part of said transcript of record any other part of the record in the consolidated case of The Central Trust Company of New York and another against The Wabash, St. Louis and Pacific Railway Company and others as he may deem material, George I. Seney, trustee, appellant, deeming the same to be material, has caused to be brought up and inserted in the said transcript of record the following other parts of the record in the said consolidated cause, to wit:

1. Report of master and order of court thereon, June 30, 1884, concerning payment of rental due June 1, 1884, on Eel River railroad.

2. Order confirming master's report on petition of receiv-
34 ers for leave to pay balance of $112,000 due on Wabash equipment, November 29, 1884.

3. Order on receivers to pay certain judgments in the State of Iowa, January 12, 1885.

4. Order on master's report on the report of receivers for the quarter ending August 31, 1884, April 13, 1885.

Yours, &c., THEODORE SHELDON,
Attorney for Appellant, 99 Randolph Street, Chicago.

Dated September 13, 1893.

To Wells H. Blodgett, Esq., attorney for appellee.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Charles Claflin Allen, being duly sworn, on his oath says that he served the above and foregoing notice in the city of St. Louis, State of Missouri, on the 14th day of September, 1893, on the therein-named Wells H. Blodgett, by delivering a true copy of the same to B. C. Winston, assistant to said Wells H. Blodgett, at the office of said Wells H. Blodgett, room 704, Commercial building, in said city of St. Louis.

CHAS. CLAFLIN ALLEN.

Subscribed and sworn to before me this 14th day of September, 1893.

My commission will expire Dec. 7, 1896.

[Seal Andrew Johnson, Notary Public, City of St. Louis, Missouri.]

ANDREW JOHNSON,
Notary Public, City of St. Louis, Mo.

[Endorsed:] Supreme Court of the United States, October term, 1893. Term No., 26. George I. Seney, trustee, appellant, *vs.* Wabash Western Railway Company, appellee. Additions to record and notices.

35 [Endorsed:] Case No. 13,771. Supreme Court U. S., October term, 1893. Term No., 26. Geo. I. Seney, trustee, app't, *vs.* The Wabash Western Railway Co. Addition to record. Filed Sept. 22, 1893.

150 U.S. 310

150 U.S. 310

Office Supreme Court U. S.
FILED,
OCT 17 1893
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 26.

GEORGE I. SENEY, Trustee,

Appellant,

vs.

THE WABASH WESTERN RAILWAY COMPANY,

Appellee.

Appeal from the Circuit Court of the United States, for the Eastern District of Missouri.

BRIEF ON BEHALF OF THE APPELLANT, GEORGE I. SENEY, Trustee.

THEODORE SHELDON,
EDWARD W. SHELDON,
OF COUNSEL FOR APPELLANT.

BARNARD & GUNTHORP, PRINTERS, CHICAGO.

150 U.S. 310

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IN THE

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No. 26.

GEORGE I. SENEY, Trustee,

Appellant,

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THE WABASH WESTERN RAILWAY COMPANY,

Appellee.

Appeal from the Circuit Court of the United States, for the Eastern District of Missouri.

BRIEF ON BEHALF OF THE APPELLANT, GEORGE I. SENEY, Trustee.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 26.

GEORGE I. SENEY, Trustee,

Appellant,

vs.

THE WABASH WESTERN RAILWAY COMPANY,

Appellee.

Appeal from the Circuit Court of the United States, for the Eastern District of Missouri.

STATEMENT.

This is an appeal from the final decree entered March 18, 1889, overruling the exceptions of the appellant, George I. Seney, trustee, to the master's report recommending that the intervening petition of the appellant for the recovery of $27,060, with interest, be denied.

This decree terminated a proceeding by intervention taken by the appellant, George I. Seney, as trustee under a mortgage of what is known as the Clarinda branch of the Wabash, St. Louis and Pacific Railway, for the recovery of $27,060 as rental for that line for the period for which it was operated by the receivers. The petition in which the proceeding began, was filed in the

suit of the Central Trust Company of New York and James Cheney against the Wabash, St. Louis and Pacific Company, the intervenor, and many other defendants.

On the 15th day of July, 1879 the Clarinda and St. Louis Railroad Company, the owner of a projected railway, eleven miles in length, extending from Clarinda, Iowa, in a southerly direction, to a point on the state line between Iowa and Missouri, leased its road to the St. Louis, Kansas City and Northern Railway Company, the owner of another railway extending from that point on the state line to Roseberry, Missouri, a distance of eleven miles, and from thence on to the city of St. Louis, for the term of ninety-one years. (A correct map of the Wabash system will be found opposite page 112 of the Omaha division record submitted with this appeal by stipulation of counsel.) As consideration for the lease and rental for the property, as well as for the purpose of obtaining funds with which to construct the entire line from Clarinda to Roseberry, a distance of about twenty-two miles, the lessee agreed to issue its own six per cent. bonds, at the rate of $12,000 for each mile of that road, and secure their payment by a mortgage of its entire interest in the railway. By way, further, of rental, the lessee agreed as follows: First, to pay from the gross earnings of the railway all its operating expenses. Second, to pay out of those earnings, or from the lessee's own funds, the interest on the bonds to the amount of $12,000 a mile. Third, if there should be any balance after meeting the foregoing charges, ten per cent. of such balance should be paid to the stockholders of the lessor. (rec., fol. 9–14.)

Contemporaneously with this lease, and in accordance with its terms, the St. Louis, Kansas City and Northern Railway Company mortgaged the line from Clarinda to

Roseberry, described as its Clarinda branch, as then acquired or to be acquired, including its leasehold interest therein, to the intervenor, George I. Seney, as trustee, to secure an issue of $264,000 of six per cent. bonds, (being $12,000 per mile for the twenty-two miles) payable in forty years from date, with interest instalments payable on the first days of August and February. (fols. 17–24.) And by way of further assurance, the Clarinda and St. Louis Railroad Company executed to the same trustee a guarantee mortgage conveying all its right, title, interest and estate in and to the demised premises, with all the mortgagor's right, privilege and franchise acquired or to be acquired, subject only to the lease. (fols., 27–34.)

Upon the execution of this lease and these mortgages, which together formed a single transaction, the St. Louis, Kansas City and Northern Railway Company took possession of the demised premises, and with the proceeds of the bonds, constructed and subsequently operated the Clarinda branch until November 10, 1879, when by consolidation with the Wabash Railway Company, itself a consolidated corporation of Ohio, Indiana and Illinois, the Wabash, St. Louis and Pacific Railway Company was created. (fol. 52.)

By the terms of this consolidation the new corporation assumed all obligations of both constituent companies. Thereafter it issued $17,000,000 of what were known as its general mortgage bonds, secured by a mortgage, dated June 1, 1880, to the Central Trust Company of New York and James Cheney, as trustees. This mortgage covered all its railways, leaseholds and other property. (fols. 320–322.) By a later mortgage, dated May 1, 1883, to the Mercantile Trust Company of New York, 2,030 shares of stock of the Clarinda and St.

Louis Railroad Company were pledged, with a large nominal amount of other property, to secure $10,000,000 of what were called collateral trust bonds of the Wabash company. (fols. 201–203.)

From 1879 until August 1, 1884, the Clarinda and St. Louis railroad was successfully and properly operated, and the terms of this lease were complied with. In the meantime, however, the Wabash Company on May 28, 1884, presented to the circuit court for the eastern district of Missouri a bill of complaint, setting forth amongst other things, the railway company's insolvency, its inability to meet various pressing debts, including interest due June 1, 1884, on its general mortgage and certain other of its bonds, the consequent danger of a breaking up of its system of railroads, and the irreparable damage that might result from such disruption, and praying for the appointment of receivers of all its property. (fols. 91–112). On the same day an order was entered appointing Solon Humphreys and Thomas E. Tutt, receivers of all the property of the Wabash company, and thus regulating their administration of the trust:

"It is further ordered that the said receivers, out of the income that shall come into their hands from the operation of said railroad or otherwise, proceed to pay all balances due or to become due to other railroads or transportation companies on balances growing out of the exchange of traffic accruing during six months prior hereto.

"That said receivers also in like manner pay all rentals accrued or which may hereafter accrue upon all leased lines of said complainant and for the use of all terminals or track facilities, and all such rentals or instalments as may fall due from said complainant for the use of any portion of road or roads or terminal facilities of any other company or companies, and also for all rentals due or to become due upon rolling stock heretofore sold to complainant and partially paid for.

That said receivers also pay in like manner, out of any incomes or other available revenues which may come into their hands, all just claims and accounts for labor, supplies, professional services, salaries of officers and employes that had been earned or have matured within six months before the making of this order.

* * * * *

It is further ordered that all parties herein, upon being informed of this order and of the approval of said bond by this court, proceed to surrender all the lines of said railroad, and all the property, choses in action and accounts of said company, to said receivers; and the complainant is authorized to apply to any other United States circuit court of competent jurisdiction for such order or orders in aid of the primary jurisdiction vested in this court in said cause as may have ancillary jurisdiction herein.

It is further ordered that said receivers pay all current expenses in the operation of said road, collect all the revenues thereof, and all choses in action, accounts and credits due and to become due to the company." (fols. 114–117.)

On June 6, 1884, and within ten days of their appointment, the receivers filed their jointly verified petition, stating that in order to pay the preferential debts which the order of their appointment required them to pay, they would need at least $2,000,000 more than was in their hands, and praying leave to issue receiver's certificates in that amount and for that purpose. (add. rec., II, fol. 2.) On the same day the court acted upon this petition and entered an order, which, after reciting the material allegations of the petition, directed the receivers to issue receiver's certificates to an amount not exceeding $2,000,000, and from the proceeds thereof to pay in full all the preferential debts. The receivers, however, were not successful in their attempts to dispose of these certificates. None were negotiated until August 14, 1884, when the first one, for $5,000, was sold, and

they were thereafter gradually marketed in sums of $5,000 and $10,000 until November 24, 1885, when $955,000 had been issued. (add. rec., fol. 9.) Up to December 31, 1886, only $1,337,804 in receiver's certificates had been issued. (Omaha division rec., fol. 156.)

On June 9, 1884, the trustees under the general mortgage (then representing the interest now vested in the appellee) filed by leave of the court their cross-bill praying the foreclosure of that mortgage and for the appointment of a receiver of the mortgaged premises. (fol. 118.)

On June 26, 1884, the receivers applied to the court for advice: *first*, as to the payment of interest and rental on certain lines, including the Clarinda branch, stated to be profitable to the receivership; *second*, as to the payment of interest on bonds of the Chicago division; *third*, as to the payment of the rental of the Eel River railway; *fourth*, as to the payment of interest on the Detroit and St. Louis railway; and *fifth*, as to how they should keep the accounts of earnings and expenses of certain enumerated lines, the earnings from which were not sufficient to meet the operating and other charges.

This petition alleged that certain lines of railway, composing the main stem of the Wabash company, and including the Clarinda branch, had at all times during the preceding five years earned more than enough to pay their operating expenses and the cost of maintenance and interest upon the several series of bonds secured by the twenty-seven mortgages or deeds of trust therein mentioned (fol. 129); that "existence of said consolidated "(Wabash) company as an entirety, with all its rights "and franchises, will be preserved, and the rights and in-"terests of its several creditors will be best protected

"and secured by paying from time to time the interest "upon the bonds and other obligations secured by mort- "gage upon the several lines and divisions last "aforesaid" (fol. 133); and in its prayer asked whether the petitioners should, until the further order of the court, pay the interest as it from time to time matured upon such bonds. (fol. 135). Upon a reference to a master, testimony was taken, and in the course of the hearing, Solon Humphreys, one of the receivers, and a former president of the Wabash company, testified that the Clarinda branch and other specified portions of the old St. Louis, Kansas City and Northern Railway had severally always earned a large amount in excess of their operating expenses, taxes and interest charges (add rec., fol. 2, 3), and that the financial trouble of the Wabash company, which had culminated in the receivership, was due to several specified temporary causes, namely, failure of crops, injury from floods, a serious bridge disaster and the payment of unearned charges on various other branch lines (add. rec., fol. 18). The examination proceeded:

"Q. What are the resources from which coupons maturing in July and until January of next year can be paid?

A. The resources will be the earnings of the road, which, in my opinion, will be largely in excess of the interest that will be required to be paid on all bonds which existed at the time of the consolidation of the St. Louis, Kansas City and Northern, and the Wabash Railway in 1879, including, also, the Chicago and Detroit divisions, which have been acquired since.

Q. In the answer that you have just made, do you mean also to include all claims and accounts which under the order appointing you and Mr. Tutt as receivers, the court has directed to be paid?

A. I do not; but I believe that, taking the earnings for the next twelve months, there will be most ample to pay the interest upon the bonds before referred to, and also the claims ordered to be paid by the court.

Q. In making that answer do you take into account the deficits likely to accrue in operating lines of road where the receipts are not equal to the operating expenses and charges of maintenance?

A. I do, because I believe that those deficits which, I find, taken together amounted to less than $300,000 in 1883, will be largely reduced in nearly every instance, first, by the change of management in working those branches, and, second, by the better crops that we are now promised in every one of those sections.

Q. To what extent does your belief depend upon the contingency of a good crop in those sections?

A. I believe, with the same condition of crops that we have had for the past two years, we will have earnings enough to cover all such deficiencies."

At this hearing before the master, counsel for the Central Trust Company, the trustee under the general mortgage, were present, and took part in the examination of witnesses. (add. rec., fols. 35 and 55.)

Two days later, June 28th, the order recommended by the master was adopted by the court. After finding that the earnings of the roads in question justified it, this order provided that: "until otherwise directed, the receivers "herein, from the incoming rents and profits of the prop- "erty, after meeting such other obligations as they have "been directed to discharge by the former orders of this "court, pay from whatever balance may remain in their "hands, the interest as the same shall from time to time "mature," * * * "or as soon thereafter as practi- "cable," upon the Clarinda branch and various other bonds. (fol. 139.)

Under this order the next instalment of rental for the use of the Clarinda branch falling due August 1, 1884,

and amounting to $7,920, was paid at maturity by the receivers. Rentals and interest on the other lines selected by the receivers accruing for the same and subsequent periods, and aggregating $2,175,062, were paid under the same authority. (Omaha div. rec., fols. 112, 132.)

Some doubt subsequently arose as to whether the order of June 28th authorized the receivers to pay interest which had matured prior to the date of their appointment, and on April 13, 1885, the court ordered as follows:

"And it is further ordered, that the receivers be and they are hereby allowed the payments made by them on sundry coupons past due at the time of their appointment, amounting in the aggregate to the sum of thirteen thousand seven hundred and twenty ($13,720.00) dollars.

And it is further ordered, that the receivers pay out of the incoming rents and profits of the property in their charge, as they may be presented for payment, all coupons which matured prior to their appointment, of bonds the coupons of which, maturing since their appointment they have been instructed to pay." (Add. rec. 3, fol. 31.)

The third question upon which the receivers sought the advice of the court in their petition of June 26, 1884, was as to payment of rental then in default upon the lease of the Eel River railway. (fol. 134.) Concerning this line their petition alleged that although the net earnings were insufficient to meet its rental, "yet, after "the most careful consideration of the matter, they "express the opinion that it would not be wise, or "for the best interests of said (Wabash) company or its "several creditors for your petitioners to lose control "of said lines, extending as they do to the city of De-"troit and there connecting with the systems of railroads "reaching eastward therefrom." (fol. 129.) Upon this question the master took additional evidence, and on

June 30, 1884, filed his report, which was directed to stand as the order of the court. This report, after finding that the quarterly rental on the Eel River lease, due June 1, 1884, was unpaid, that the lease provided for a forfeiture when any such rent was in default for thirty days, and that the testimony presented did not entirely convince the master of the wisdom of the receivers in desiring to assume the lease, proceeded as follows (add. rec., 2, fol. 24):

"But, in view of the fact that the payment of comparatively a small sum of money, $27,920, on the 1st of July proximo, will save the forfeiture of the lease of the Eel River road, thus giving time until October 1st for a more complete examination of the question of retaining the Detroit division, and an opportunity for all parties interested to be heard, I recommend that the following order be entered at this time:

It is ordered that the receivers herein, from the incoming rents and profits of the property in their charge, after meeting such other obligations as they have been directed to discharge by the former orders of this court, pay from whatever balance may remain in their hands the rental which became due June 1, 1884, to the Eel River Railroad Company, amounting to the sum of twenty-seven thousand nine hundred and twenty ($27,920) dollars."

This sum was immediately paid, and the receivers were thereby protected in their possession of the demised premises. (Omaha division rec., fol. 141.)

An *ex parte* application was made by the receivers September 20, 1884, for the court's consent to the payment of interest on the bonds for the Champaign, Havana and Western Railway, a branch east of the Mississippi. (fol. 147.) No action touching any other line was sought. The court on the 15th of October refused to direct such payment, stating orally that interest would not be paid on any road which did not earn its operating

expenses. (fols. 154-157.) On March 20, 1885, the receivers again applied to the court for instructions with reference to the further operation of the various lines held under leases and concerning the rental agreed to be paid therefor. (fol. 164.) This proceeding was entitled: "In the matter of the application of the receivers "for cancellation of certain leases" (fol. 167), and the petition alleged that notwithstanding the representations made by the receivers in their application for advice in June, 1884, the Clarinda branch, among other lines, had not earned its operating expenses. The court, on April 16th, announced its opinion on the application, which was directed to stand as an order, to the effect, among other things, that the subdivisional accounts must be kept separately; that where any subdivision earns a surplus over expenses, the rental or subdivisional interest would be paid to the extent of the surplus. Where it earned no surplus, but simply paid operating expenses, no rent or subdivisional interest would be paid, and where not only was no surplus earned but an actual deficiency existed, that operating expenses would be reduced to a minimum. (fols. 170-176.) In conjunction with the foregoing application the trustees under the Wabash general mortgage, who shortly after the filing of the Wabash bill had exhibited their cross-bill for the foreclosure of that mortgage, renewed their motion of October 14, 1884 (fols. 160-163), to have the receivership extended so as to become the receivership under their mortgage as prayed in their bill. This cross-bill, together with a similar original bill filed in the state court and removed to the federal court, had, in the meantime, been consolidated with the original Wabash bill; but the request was denied on the ground that the receivers

were not receivers for any party, but were simply the hand of the court. (fol. 175.)

The intervenor was made a party defendant to the consolidated bills; but was not served with process, and first became a party to the proceedings on January 4, 1885, when he entered his appearance. (fol. 69.) His answer to the consolidated bills was filed April 28, 1885, and is set forth at folios 178–184. The inception of the mortgages to the intervenor is there alleged, as well as the priority in time and equity of their lien, and a protest made against the displacement of that lien by any charges or expenses incurred in the action, or by any receivers' certificate issued or to be issued.

The semi-annual instalments of the Clarinda branch of interest or rental falling due February 1, 1885, August 1, 1885, and February 1, 1886, remained unpaid, and in March, 1886, a bill for the foreclosure of the mortgage was filed by the intervenor in the circuit court of Page county, Iowa. By permission of the court below the Wabash receivers were made defendants to the action. This bill alleged that the complainant had been requested by the holders of the requisite number of bonds to take possession of the mortgaged property (fol. 266), and a part of the prayer was, that a receiver of the Clarinda branch be appointed, and that upon such appointment the Wabash receivers should surrender that division to him. Upon March 22, 1886, the intervenor filed in the court below his petition for the surrender of the mortgaged and leased property (fols. 252–254), and on April 6, 1886 (fols. 281–285) the court ordered its receivers to surrender the Clarinda Branch to Thomas McKissock, the receiver appointed in the Iowa foreclosure, which latter action had meanwhile been removed to the United

States circuit court for the southern district of Iowa. This order directed (fol. 284) the Wabash receivers to appear in the Iowa court, and to there proceed against the Clarinda branch for its share of expenses of the Wabash receivership and the preferential indebtedness of the Wabash company. As directed in the order, the Wabash receivers, on April 16, 1886, surrendered the Clarinda branch to McKissock, receiver.

On January 6, 1886, a decree of foreclosure and sale under the Wabash general and collateral mortgages, was entered (fol. 184). This decree, founded not on the original Wabash bill, but on the bills and cross-bills of the trustees of these mortgages (fol. 189), specially reserved all rights under the Clarinda Branch and other leases and mortgages (fols. 210, 219 and 233), and adjudged that the receivers' surrender of any leased branch lawfully terminated the lease as of the date of such surrender. (fol. 236). At the sale had April 26, 1886, in pursuance of this decree, a committee of the general and collateral trust bondholders became the purchasers for $625,000 (fol. 285). By subsequent orders of June 15, 1886 (fol. 285), September 21, 1886 (fol. 286), December 31, 1886 (fol. 287), March 30, 1887 (fol. 289), April 14, 1888 (fol. 299), and May 8, 1888 (fol. 304), the sale was confirmed, and the receivers were directed, upon certain conditions being performed, and certain security given, to transfer all the property in their possession to the purchasing committee, or to the Wabash Western Railway Company, a new corporation organized to take over the property and the appellee herein. In accordance with the direction of the last recited order, the appellee filed May 14, 1888, a stipulation by which in consideration of such transfer, it entered its appearance as a party to the

foreclosure action, and agreed, among other things, to pay all claims and demands "growing out of the opera- "tion by said receivers of the railway property lately in "their charge which have been or may be adjudged to "be superior in equity to the mortgages foreclosed by "said decree" (fol. 306). A transfer of the entire property, being substantially the lines covered by the twenty-seven underlying mortgages, was thereupon made to that company, and it has since assumed the defense of the intervenor's claim.

The actions for the foreclosure of the Clarinda branch mortgages were in the meantime prosecuted by the trustee to final decree, and on the sale had, in pursuance thereof, a deficiency decree which still remains wholly unpaid, was entered in favor of the trustee for upwards of $200,000 (fol. 337).

During the time the Clarinda branch was in the possession of the Wabash receivers, their reports, beginning with the one filed March 20, 1885, made upon a mileage basis, showed that they expended in necessary maintenance, operation and taxes, a sum in excess of the gross income from the earnings arising therefrom.

On May 29, 1884, when Humphreys and Tutt were appointed receivers of the property of the Wabash, St. Louis and Pacific Railway Company, the indebtedness of that company for labor and supplies and other preferential claims which said receivers were by the order of their appointment directed to pay "out of any incomes or "other available revenues," amounted to $4,417.491 (fol. 310), against, which they came into possession of floating assets amounting to $1,330,943.53. Thus leaving preferential claims to the amount of $3,086,347.47. (Omaha division, rec., fol. 159.)

The total earnings of all the roads operated by the receivers from the date of their appointment to March 6, 1886, were $25,615,478.87, and the operating expenses of said roads during the same period were $24,151,249 55 (fol., 311), leaving a net total of $1,464,229.32.

The petition of the intervenor was referred to a special master, who, by his report filed May 16, 1887, recommended that the prayer of the petition be denied. Exceptions to this finding were taken by the intervenor (fols. 55, 56), which were in part sustained by the court, and a decree was entered March 21, 1888, in the intervenor's favor, in the sum of $11,263, being the rental upon the lease of the Clarinda and St. Louis Railway from August 1, 1884, to April 16, 1885, together with interest thereon from April 16, 1885, to the date of the decree, amounting to the further sum of $1,971.32, in all to $13,234.32.

The court below, in entering this decree, found (fols. 69, 70) that as to intervenor the order of June 28, 1884, directing the payment of the Clarinda branch interest until further notice, remained in force, and bound the receivers until the subsequent order of April 16, 1885. A petition for rehearing was applied for and allowed, and on March 18, 1889, the court below (fols. 84–87) reversed its former finding and dismissed intervenor's petition, holding that the words "it is ordered that until otherwise directed "the receivers herein, from the incoming rents and profits "of said property, after meeting such other obligations "as they may have been directed to discharge by the "former orders of this court, pay from whatever balance "may remain in their hands the interest as the same shall "from time to time mature upon the following bonds or "other obligations accrued by mortgage" on the Clarin-

da branch and other divisions, were to be construed not as an order binding the assets of the receivership, but simply as a direction for the payment of the interest in question after the liquidation of all the preferred indebtedness of the Wabash company, and that inasmuch as the income of the receivers had not equaled such indebtedness, intervenor's rental should not be paid. Final decree dismissing intervenor's petition was thereupon entered, and from this decree George I. Seney, trustee, has appealed to this court.

The death of Mr. Seney has occurred since the taking of this appeal, and by stipulation of counsel, the purchasing committee for the bondholders under the two Clarinda branch mortgages have been substituted as appellants herein.

II. Specification of Errors.

First. That the intervenor's exception to the master's failure to find that the Wabash receivers were liable to intervenor for the rental accruing under the Clarinda Branch lease during the period the same was in their possession, was overruled.

Second. That the intervenor's exception to the construction, by the master, of the order of June 28, 1884, as precluding the relief prayed for by intervenor, when in fact said order actually directed the receivers to pay the rental herein sought to be recovered, was overruled.

Third. That the court erred in setting aside the decree of March 21, 1888, entered in intervenor's favor for $13,234.32.

Fourth. That the court below erred in dismissing intervenor's petition.

III. Argument.

I. *When receivers elect to retain possession of leased property, they obligate themselves to perform the covenants contained in the lease.*

II. *The facts of the present case, as hereinbefore stated, established the election of the Wabash receivers to assume the lease of the Clarinda branch from May 29, 1884, to April 16, 1886.*

III. *No special differentiating circumstances prevent the application of the general rule in the present case.*

IV. *The income collected by the receivers is primarily charged with the payment of these claims, with recourse, if necessary, to the corpus of the property.*

V. *The decree of the circuit court should be reversed, with directions to enter a decree in favor of intervenor for the sum of $27,060, with interest from April 6, 1886.*

Point I.

WHERE RECEIVERS ELECT TO RETAIN POSSESSION OF PROPERTY, REAL OR PERSONAL, HELD UNDER A LEASE, THEY BECOME LIABLE, WHETHER AS EQUITABLE ASSIGNEES OF THE LEASE OR BY VIRTUE SOLELY OF SUCH ELECTION, FOR THE STIPULATED RENT DURING THE PERIOD OF THEIR POSSESSION.

This statement of the law is axiomatic, and includes all classes of receivers. In the case of statutory receivers, liquidators and assignees in bankruptcy, the doctrine proceeds "on the ground that on the election being made,

"the receiver or assignee becomes vested with the title "to the leasehold interest, and a privity of estate is "thereby created between the lessor and the receiver or "assignee, by virtue of which the latter becomes liable "on the covenants running with the land." (Matter of Otis, 101 N. Y., 580, 585.) If any distinction is to be drawn in the case of chancery receivers appointed to preserve property *pendente lite*, while the courts are not always agreed in their reasoning, the conclusion rather rests on general considerations of fair dealing.

Many authorities might be cited, but the following will serve as illustrations:

Turner v. *Richardson*, 7 East., 335.

Thomas v. *Pemberton*, 7 Taunt., 206.

In re Oak Pitts Colliery Co., 21 Ch. Div., 322.

In re Silkstone & Dodworth Coal & Iron Co., L. R., 17 Ch. Div., 158.

In re North Yorkshire Iron Co., L. R., 7 Ch. Div., 661.

Ex parte Faxon, 1 Lowell, 404.

Woodruff v. *Erie Railway Co.*, 93 N. Y., 609.

People v. *Universal Life Ins. Co.*, 30 Hun, 142.

Martin v. *Black*, 9 Paige, 641.

Commonwealth v. *Franklin Ins Co.*, 115 Mass., 278.

High on Receivers, 2d Ed., Secs. 273, 394*b*, 395*b*.

Beach on Receivers, Secs. 372, 514.

People v. *National Trust Co.*, 82 N. Y., 283, 288.

In re International Marine Hydropathic Company, L. R., 28 Ch. Div., 471.

In re National Arms and Ammunition Company, L. R., 28 Ch. Div., 474.

In re Dry Docks Corporation of London, L. R., 38 Ch. Div., 306.

In re Blackburn & District Benefit Building Society, *ex parte* Graham, L. R., 42 Ch. Div., 343.

This court has recently recognized the doctrine in its relation to both assignees in bankruptcy and chancery receivers. In the language of Mr. Chief Justice FULLER:

"They (assignees in bankruptcy), were not bound, however, to accept property of an onerous and unprofitable nature, which would burden instead of benefiting the estate, and they could elect whether they would accept or not, after due consideration and within a reasonable time, while, if their judgment was unwisely exercised, the bankruptcy court was open to the creditors to compel a different conclusion. (*Glenny* v. *Langdon*, 98 U. S., 20; *American File Co.* v. *Garrett*, 110 "U. S., 288.)"

Sparhawk v. *Yerkes*, 142 U. S., 113.

The specific application of the principl to a railway receivership was made in the same volume of reports, Mr. Justice BROWN saying:

"The receiver did not simply, by virtue of his appointment, become liable upon the covenants and agreements of the railway company. (High on Receivers, Sec. 273; *Hoyt* v. *Stoddard*, 2 Allen, 442.) Upon taking possession of the property, he was entitled to a reasonable time to elect whether he would adopt this contract and make it his own, or whether he would insist upon the inability of the company to pay, and return the property in good order and condition, *paying, of course, the stipulated rental for it so long as he used it.*

(*Turner* v. *Richardson*, 7 East, 335; *Commonwealth* v. *Franklin Insurance Co.*, 115 Mass., 278; *Sparhawk* v. *Yerkes*, *ante*, 1.)"

Sunflower Oil Co. v. *Wilson*, 142 U. S., 313, 322.

While the Chief Justice in a case growing out of this same Wabash receivership, and to which we shall later recur, reiterated the doctrine:

"In *Sunflower Oil Company* v. *Wilson*, 142 U. S., 313, 322, where an oil company contracted with a railway company to purchase certain rolling stock and lease the same to the railway company at a specified rental, the latter agreeing to purchase and pay for it in cash on or before a given date, or if it should be unable to do so to turn it over to the oil company at the expiration of the contract in good order and condition, and the railway company became insolvent and its mortgaged bondholders instituted proceedings to foreclose and had a receiver appointed, it was said:" (quoting as above.) * * * "As between the mortgagees invoking the interposition of the court and the oil company, the agreed rental was held to be the proper payment to be made for the use of the rolling stock under the particular contract in question."

Quincy, Missouri and Pacific Railroad Co. v. *Humphreys*, 145 U. S., 82, 100, 101.

In conjunction with this last decision, the *St. Joseph & St. Louis Railroad Co.* v. *Humphreys*, 145 U. S., 105, an analogous case, may also be cited.

All of these later cases accord with the case of the *Peoria & Pekin Union Railway Co.* against the *Chicago, Pekin & Southwestern Railway Co.*, 127 U. S., 200. There the liability of a receiver for the rental of a railway was directly considered by this court, and the conclusion reached that the parties, the receiver and the lessor, had agreed upon a temporary compensation to

abide the determination of the question whether a higher stipulated rent should be paid. A settlement of this question not having been reached, the receiver abandoned the use of the road, paying the temporary compensation up to the time of such surrender. This latter being deemed reasonable, and the stipulated rental fictitious and excessive, the receiver was adjudged to have fulfilled his obligation in the matter.

Similar reasoning was employed by this court in *Thomas* v. *Western Car Co.*, 149 U. S., 95, and by the circuit court for the eastern district of Texas, in *Easton* v. *Houston & Texas Central Ry. Co.*, 38 Fed. Rep., 784, where PARDEE, J., said (at page 788):

"Here is authority—almost express authority—for the receivers to take possession of the lease between the intervenor and the railway company, and to run, operate and manage the cars furnished by the intervenor under the said lease. Under this authority the receivers, with full knowledge of the obligations of the railway company, and the condition of the property furnished thereunder, did take possession of the lease and leased property, and operate the same, enjoying all the advantages thereof, and all for the benefit of the trust fund. It would seem that under this state of facts, the receivers, fully authorized thereto, became the assignees of the railway company, and thereby legally and equitably obligated themselves to perform the several covenants undertaken by the company as to the care and return of the leased property. The lease in question was an entirety; of necessity an assignment or assumption thereof was of the whole, and not of any particular part."

The obligation of a receiver of a railway for the rental of another railway held under a lease was likewise the subject of review by the court of Appeals of New York in the well-known case of *Woodruff* v. *Erie Railway Co.*, *supra*, 93 N. Y., 609, and RUGER, Chief Justice, there said:

"Whatever might be the respective rights of the various parties to this action as between themselves to priority in the participation of the assets of the insolvent Erie Railway Company, such rights could affect only the property remaining after the liabilities created under the receivership had been fully paid and satisfied. Under the orders referred to, it was not only within the power of the receiver to assume the obligations of the several leases referred to, so far as the payment of rent either due or to grow due thereon was concerned, and discharge the same with any funds in his hands, but he was further authorized to bind even the corpus of the estate without regard to the rights of the several mortgagees therein in exercising the authority conferred upon him. *Miltenberg* v. *Logansport R. R. Co.*, 106 U. S., 286; *Langdon* v. *Vt. Cent. R. R. Co.*, 50 Vt., 500; 53 *id.*, 230; 54 *id.*, 503.

"The receiver was not only thus authorized to assume the obligations of the lease and bind the estate in his hands to the payment of the rent accruing thereon, but by entering into the possession of and occupying such leased property he manifested by an unequivocal act his election to regard the continuance of such lease as beneficial for all the parties interested, and his intention to continue the interest acquired by the Erie Railway Company under such lease. He could not take possession of the property and enjoy its use and occupation without incurring a liability for the payment of the rent under the lease by which his predecessor secured its possession. The principles which govern the liability of an assignee of a lease seem to be applicable to the case of a receiver, and he would be equitably and legally chargeable with the payment of rent under a lease for such time as he continued to occupy the property demised.

"While it was competent for him at any time to negotiate anew and secure a modification of the terms of the lease, with the consent of the various parties interested, or to repudiate the lease and surrender the property, yet, not having done so, he must be held to have continued his acceptance under the terms and conditions of the existing lease as to the payment of the rent thereon.

"His position has been said to be analogous to that of an executor who takes possession and enjoys the occupation of property held under a lease by his testator. He thereby becomes liable for the payment of the rent accruing during his occupation of the premises, according to the terms of the lease under which it was acquired. (*Martin* v. *Black*, 9 Paige, 641.) The assignee of a bankrupt also occupies an analogous position, and is subject to a similar liability.

"While we regard these considerations decisive of the receiver's liability, we have not failed to notice the argument of the respondent as to the equities of the parties founded upon the assumed inability of the leased road to earn the amount of the rent secured by its lease.

"If the lease in question was an unprofitable one for the receiver to continue, it was optional with him at any time to terminate it by a surrender of the demised premises, and thus avoid liability thereunder.

"It seems to us, however, that it does not necessarily follow that the value of any specified portion of an extensive railway system can be measured with exactness by the amount of the receipts of such particular portion. Its value as a feeder or connecting link in such a system may be largely disproportioned to the actual sum received for transportation over it. Such considerations, influential as they might be in affecting the action of parties in negotiating a contract for the use of a railroad, would preclude a court from holding that the actual receipts of a road thus situated constituted an equitable basis for fixing the compensation to be paid for its use."

Point II.

THE FACTS OF THE PRESENT CASE ESTABLISH THE ELECTION OF THE WABASH RECEIVERS TO ADOPT THE LEASE OF THE CLARINDA BRANCH.

The receivers under their order of appointment of May 29, 1884, took possession of some thirty-five different lines of railroad—some held by the Wabash company in fee, others under leases, some earning net incomes, others running at a loss. Each line was covered by an "underlying" or first mortgage, and all were conveyed by the general mortgage. The *sole* object of the receivership, as shown by the bill of the Wabash company, was to protect those whose only security lay in the continuity or preservation of the system. These were (1) the general mortgage bondholders, and (2) the unsecured creditors of the Wabash company. Throughout the entire litigation the underlying mortgagees have been dealt with upon the theory that they were amply secured and needed no protection at the hands of the court. It was obviously the duty of the receivers, and the general mortgage bondholders, at the earliest opportunity, to notify the court which of the lines were profitable and, therefore, desirable to keep together as a system, and thus preserve the security of the general mortgage; and also which of the lines the further operation of which at a loss by the receivers would impair the security of the junior lienholders aforesaid. Both of the receivers at the time of the appointment were directors of the Wabash company, and one of them for some years had been its president. Their general agent, James F. How, was also the acting general manager of the company at the time of their ap-

pointment. They were, therefore, not without full and accurate information as to the value and income-producing capacity of each of the lines in their charge. On June 26, 1884, about one month after their appointment, they reported to the court that at all times during the five years preceding their appointment, each and all of the lines theretofore conveyed to twenty-seven different underlying mortgagees to secure twenty-seven series of bonds and leases, including among such lines the Clarinda branch, had "earned more than enough to pay "all their operating expenses, the cost of maintenance, "and interest upon the several series of bonds above de- "scribed and respectively secured upon them by the "mortgages or deeds of trust aforesaid." (fols. 121–129.)

The receivers also reported that ten other lines, each subject to a different underlying mortgage, had severally failed, since their acquisition by the Wabash company to earn sufficient income to meet their operating expenses, cost of maintenance and interest or rental. (Fols. 130–133). The petition prayed the advice of the court (1) as to whether they should "until the further orders of this "court, pay the interest as the same from time to time "matures," upon the stated twenty-seven underlying mortgages covering these profitable lines; (2) as to whether interest should be paid on the Chicago division mortgage; (3) as to whether rental should be paid for the line from Logansport to Butler; (4) as to what should be done concerning payment of the mortgage interest on the line from Butler to Detroit Junction; and (5) as to how they should keep the accounts of the non-paying lines in their possession.

The sole object of this petition was to obtain the court's

ratification of the receiver's selection of the profitable lines upon which interest and rental were to be paid, as well as their rejection of the lines to be surrendered as unprofitable. These selections were made with the utmost care and deliberation. The motive for such selection was, as stated by the receivers, that "the existence of "said consolidated (Wabash) company, as an entirety, "with all its rights and franchises, will be preserved and "the rights and interests of its several creditors will be "best protected and secured by paying, from time to "time, the interest upon the bonds and other obligations "secured by mortgage upon the several lines and divi-"sions last aforesaid." (Fol. 133.)

The receivers' petition was referred to a master who took testimony and returned the same together with his findings thereon to the court. At the hearing before the master the Central Trust Company and James Cheney, the trustees under the general mortgage, were represented by counsel, who took part in the examination of the witnesses (add. rec., fols. 35 and 55). The witnesses examined were Solon Humphreys, one of the receivers, and who for the preceeding seven years had been connected with the Wabash company as its president or director, (add. rec., fol. 2), and James F. How, the general agent of the receivers, who since the organization of the Wabash company had been its secretary, some of the time its vice-president, and at other times its general manager. (add. rec., fol. 45). These witnesses testified that during the five years preceding the appointment of the receivers, the lines subject to the twenty-seven underlying mortgages described in the petition of the receivers, including the Clarinda branch, had severally at all times earned more than enough to meet all operating ex-

penses, cost of maintenance and interest upon the underlying mortgages or leases to which they were subject. (add. rec., fols. 2–6, 17–19).

On June 28, 1884, the master filed his detailed report, which was confirmed, and ordered to stand as the order of the court, wherein it was found that the lines subject to the twenty-seven underlying mortgages in question had severally at all times during the previous five years, earned more than enough to meet all operating expenses, cost of maintenance, taxes and interest on the underlying mortgages; and concerning the payment of future interest and rentals on such lines, it was recited as follows:

"It is ordered that until otherwise directed, the receivers herein from the incoming rents and profits of said property, after meeting such other obligations as they have been directed to discharge by the former orders of this court, pay from whatever balance may remain in their hands the interest as the same shall from time to time mature upon the following bonds * * * to wit: * * * On the first days of February and August (or as soon thereafter as practicable) the semi-annual interest at six per cent. per annum, then due on two hundred and sixty-four (264) bonds of one thousand dollars each, issued in July, 1879, and secured by mortgage on the Clarinda and St. Louis Railroad (otherwise known as the Clarinda Branch), amounting to $7,920." (Fol. 139.)

The order further directed that the receivers keep separately the accounts of the non-paying lines enumerated in their petition (fol. 144). The annual interest or rental on underlying mortgages and leases, which this order directed the receivers to pay half-yearly "until "otherwise directed," amounts to $2,525,154. No exception to this order have been taken by any of the parties to the litigation, and by virtue of its authority the re-

ceivers have more or less promptly paid the interest and rental accruing on all the twenty-seven underlying mortgages so long as they were permitted to remain in possession, with the exception of the Clarinda branch and the Omaha division. These rental and interest payments are set forth in detail in their report shown at fols. 109–159 of the Omaha division record. As directed by this order the receivers paid the August 1, 1884 rental interest on the Clarinda Branch, but have failed to pay any accruing thereafter. Seney, the intervenor, entered his appearance in the litigation on January 4, 1885. His instalment of rent due February 1, 1885, was not paid, and he relied upon its payment at an early day thereafter. On March 20, 1885, the receivers filed their petition alleging that certain leased lines, including the Clarinda branch, had not since May 29, 1884, earned sufficient to meet operating expenses, cost of maintenance, taxes and rental, and that the deficit upon Clarinda branch, excluding the $7,920 rental paid August 1, 1884, amounted to $4,624.69 (fols. 162–166). The advice of the court was asked concerning the future operation of these non-paying leased lines. The court on April 16, 1885, announced its opinion on this application, which was directed to stand as an order, to the effect, amongst other things, that subdivisional accounts must be kept separately; that where any subdivision earned a surplus over expenses, the rental or subdivisional interest would be paid to the extent of the surplus; where it earned no surplus, but simply paid operating expenses, no rent or subdivisional interest would be paid; and where not only was no surplus earned, but an actual deficiency existed, that operating expenses would be reduced to a minimum (fols. 170–173).

On March 22, 1886, intervenor applied to the court for the surrender of the Clarinda branch (fols. 252–254), and on April 6, 1886, an order was entered (fol. 281) directing the receivers to surrender the property to the receiver appointed in the foreclosure actions instituted by intervenor. The order also required the receivers to appear in the last named actions and there prosecute to final adjudication their claim against the Clarinda branch for any deficit in operating expenses, and also for its share of the alleged preferential debts of the Wabash company. As directed by this order the Clarinda branch was surrendered April 16, 1886, and within a week thereafter intervenor filed his petition in the court below for the recovery of the rental in question.

The conclusion is irresistible that the receivers, acting with the utmost deliberation and in the exercise of their best judgment, elected to adopt and did actually adopt the lease of the Clarinda branch. The order ratifying such election and adoption was entered without dissent on the part of the trustees under the general mortgage, and doubtless was sought at the direct request of the holders of the bonds secured by that mortgage. Its entry enabled the profitable lines to be held together and preserved for the benefit of the general mortgage bondholders. Of course as against the underlying mortgagees and lessors, this could not be effected without provision for immediate or early payment of accruing interest or rental. The receivers prayed for an *absolute unqualified* order directing them to make such payment, and the court, with the consent of all parties, entered such an order. By the same order, the unprofitable lines were set apart, and their owners were notified that the receivers were not to be bound for their interest or rental. If such

action on the part of the receivers, with the knowledge and assent of the general mortgagee, and followed, as it was by the payment of the rental interest on August 1, 1884, did not constitute an election, it would, indeed, be difficult to imagine how, in a case like this, an election would be demonstrated. On the first hearing of this matter in the court below, the learned circuit judge, after quoting from the order of June 28, 1884, said (fol., 69):

"Now the rental from August 1, 1884, to April 16, 1885, stands, we think, upon a different footing. There was an express order of the court in reference to that branch and *couched in such language that the intervenor had a right to rely upon it, and expect the payment of his rent, until some other order was made.* Wherever a specific order is entered, after showing and petition by the receivers, it would seem as though the party stood upon a different footing, and was not called upon to assert his rights as lessor to the surrender of the leased property. Whatever might have been the reasons, and however much mistaken the receivers may have been, they acted upon their best judgment, and the *court seems by that order to have given express assurance to the intervenor that the interest of the system required payment of that rental, and the preservation of that property in the system;* so that the order will be that the exceptions to the report of the master will be partially sustained, and the receivers directed to pay the rental for the time specified with interest."

Or, in other words, that the receivers had deliberately elected to assume the Clarinda branch rental until otherwise ordered, and the court was thereby pledged to the payment of such rental.

Upon grounds hereinafter discussed, this ruling was set aside and one adverse to intervenor substituted therefor; but we are thoroughly convinced that the first impression of the learned court below was correct, and that the facts establish beyond question the election of the Wabash receivers to adopt the Clarinda lease.

The construction of the order of June 28th has been very recently before this court in the case of *Quincy, &c., Railroad Co.* v. *Humphreys*, 145 U. S., 82. The Quincy line was one of the ten non-profitable roads enumerated in the petition of the receivers (fol. 130) concerning the disposition of which they sought the advice of the court. (fol. 135.) The order directed them to keep the accounts of the Quincy road separately. (fol. 144.) In considering the effect of this order upon the claim of the Quincy company for rental, this court say (p. 101):

"Within a month the receivers applied to the court "for instructions, distinctly setting forth that there was "no income to pay the rental in question, and the order of "the court, entered at once, proceeded upon the theory "that they were not to be bound by the rental prescribed."

Intervenor's road, on the other hand, was reported as being profitable, and the order of the court did proceed upon the theory that his interest was to be paid. The reasoning of the Quincy case, when applied to intervenor's claim, substantiates our contention, that the receivers deliberately elected to assume the rental of the Clarinda branch.

In the light of these facts, so clearly showing as they do the election of the receivers to assume the stipulated Clarinda rental, and the acquiescence of the general mortgage bondholders in such election, we desire to especially emphasize certain principles to which the same learned judge from whose conclusions the present appeal is taken, has recently given cogent expression in this court:

"But it is urged," he says, "and with force, that the court did not allow contract price, but only rental, and the question is asked: May a court, through its receiver,

take possession of property and pay no rental for it? If it may legitimately compel the operation of the railroad in the hands of its receiver, in order to discharge the obligations of the company to the public, may it not also, and *must it not also*, burden that receivership and the property in charge of the receiver, with all the expenses connected with the operation of the road, together with reasonable rentals for the property used and necessary for the operation of the road? As to the general answer to these inquiries, we have no doubt. A court which appoints a receiver acquires, by virtue of that appointment, certain rights and assumes certain obligations, and the expense which the court creates in discharge of those obligations are burdens necessarily on the property taken possession of, and this, irrespective of the question who may be the ultimate owner, or who may have the preferred lien, or who may invoke the receivership. So if, at the instance of any party rightfully entitled thereto, a court should appoint a receiver of property, the same being railroad property, and, therefore, under an obligation to the public of continued operation, it, in the administration of such receivership, might rightfully contract debts necessary for the operation of the road, either for labor, supplies or rentals, and make such expenses a prior lien on the property itself; and it is in reliance on this general proposition that the intervenors insist on an affirmance decree."

Knecland v. *American Loan and Trust Company*, 136 U. S., 98.

* * * * * *

"The initiative in the matter was taken by the trustees. They asked, by their bill, that the court take possession of all the personalty. If more was taken possession of than was needed, it was their mistake. The court is not to be assumed to be an experienced railroad manager, knowing exactly the amount of rolling-stock needed for the operation of the road. It may justly assume that what had been contracted for was necessary; and, if the trustees ask that all may be taken possession of, it may act upon that as a declaration that all is necessary, and that rental value is to be

paid for all. Theirs is the inquiry, and not the court's. It is a mistake to suppose that their duties, in respect to the foreclosure proceedings, are formal merely, or limited to the employment of counsel and the handling of securities. They assume all the obligations of a party to the suit. They are charged with the care of the entire mortgage interest. They ask and receive large allowances for caring for that interest; and it is a part of their duty to make examination and become fully informed in respect to the property, its liens, what is needed for its operation, and what can prudently and safely be dispensed with. Upon such information their application should be based. It is true the court is not concluded by their representations; but its information is in the first instance derived therefrom, and it may, and does generally, act upon them; and its action, based on them, must be held to be conclusive so far as concerns the interest they represent, in respect to all liabilities and obligations flowing from the possession of a receiver. Whatever action the court may take thereafter, on information furnished by its receiver, or by them, or otherwise, in respect to the property not primarily chargeable with their lien, its first action is the recognition of the validity of their application; and the taking possession of all the property they name is in reliance upon their representation that all is needed for the operation of the railroad, and that they consent either to the payment of the unpaid purchase price of any property thus taken possession of, or a reasonable rental for the use of the same." (*Ibid.*, pp. 101, 102.)

The pertinency of this language to the present discussion is immediately apparent. The ample knowledge and deliberate action which characterized the treatment of the Clarinda branch by the Wabash company, the receivers and the trustees under the general mortgage, in applying for and consenting to the order of June 28, 1884, leave no room for doubt as to their intentions. Those trustees represented the only interests that could be prejudiced by the retention of this leasehold, or by the payment of the stipulated value of its use. No

suggestion of the unreasonableness of the rental was offered, nor, until March, 1885, was the question of the advisability of terminating the lease propounded. No modification of the terms of the lease was proposed and no reduction in the agreed rental asked. It was not until the order of surrender was entered that the lease was "lawfully terminated," as the foreclosure decree of January 6, 1886, adjudged (fol. 236), leaving a balance of rent due from August 1, 1884 (fol. 232), and reserving all rights for its collection (fol. 210).

Now, we submit that, so far as involved this lease, only three conditions were possible: *First*, an acceptance by the receivers of the lease; *second*, a disavowal of the lease within a reasonable time after taking possession, or, *third*, a new contract with the lessors for the use of the premises. Neither of the last two courses having been followed, and the action of the receivers and subsequent mortgagees having expressly negatived any such intention on their part, we are restricted by the necessity of both logic and facts to the first, and compelled to adopt the already quoted language of PARDEE, J.: "The lease "in question was an entirety; of necessity an assignment "or assumption thereof was of the whole and not of "any particular part." (38 Fed. Rep., 784.)

The wisdom of the receivers and the general mortgage bondholders in their selection in June, 1884, of lines to be kept, and in their rejection of those to be surrendered, is apparent when it is observed that all of the lines covered by the twenty-seven underlying mortgages and sought to be retained by the receivers, excepting only the Clarinda branch and the Omaha division, were kept intact throughout all the litigation and passed from the possession of the receivers to that of the appellee; and

their net earnings were such that the purchasing committee under the general mortgage, acting for the appellee, were warranted in paying not only the preferential debts and the receivers certificates, but also all bonded interest and rentals. There was nothing in the order of June 28th which permitted the receivers or the general mortgage bondholders to hold the selected lines if they continued profitable and to reject them *ab initio* should it appear that their choice had been improvidently made.

Point III.

NO SPECIAL DIFFERENTIATING CIRCUMSTANCES PREVENT THE APPLICATION OF THE GENERAL RULE TO THE PRESENT CASE.

It has been strenuously insisted in the court below that while the facts involved in this appeal would ordinarily sustain our contention, there are certain additional features which suffice to remove the case from the operation of the rule laid down in the first point of this brief.

These alleged distinguishing facts may be epitomized as follows:

I. That the Wabash receivership was obtained on the application of the insolvent corporation, and not at the instance of a creditor.

II. That the earnings of the Clarinda branch did not exceed its operating expenses.

III. That the orders of the court below, entered *pendente lite*, changed the obligation of the parties.

IV. That the rental which may be recovered is limited to the proportion which the railway in Iowa, the leasehold part, bears to the entire length of the branch.

V. That the intervenor cannot maintain this proceeding, because the Clarinda branch mortgage did not specifically embrace rents.

I. The nature of the inception of the receivership:

It is true that the appointment of the receivers had the anomalous feature of being made on the insolvent's own application. But it is equally true that the receivership embraced all the property of the insolvent, and was created and maintained in a litigation to which all lessors and mortgagees interested in that property were parties. There were the parties, the *res* and the invocation of the aid of the court of equity, and the appointment which followed, by whomsoever proposed, must be deemed to have completely fulfilled the theory of a temporary judicial management of property subject to conflicting claims. Within ten days, and as foretold in the original bill (fol. 104), the trustees under the general mortgage filed their cross-bill for the foreclosure of that mortgage and the appointment of a receiver thereunder. This done, all the ends of the original bill were attained. *No further proceedings were had under the original bill of the Wabash company, but the cause thereafter proceeded to final decree upon said cross-bill* (fol. 189). The entire proceeding was substantially an action under the general mortgage. "Mr. Humphreys "was named to the court not only by the mortgagor, but "by the mortgagees in the general mortgage." BREWER, J., in *Central Trust Company* v. *Wabash, &c., Company*, 29 Fed. Rep., 618, 620. The general mortgage bondholders thus unequivocally ratified the original appointment of the receivers.

The possibility of a distinction in status or remedy apparently suggested itself immediately after the receivers took possession, for by their cross-bill filed June 9, 1884,

and subsequently on October 14, 1884 (fol. 158), on November 17, 1884 (fol. 161), and again in April, 1885, the trustees under the general mortgage, actuated doubtless, by a sense of abundant caution, made their formal requests for a reappointment of the receivers. These applications were summarily denied, the circuit judge using this language upon the hearing of the last one (fol., 175):

"Application is also made for the reappointment of re-
"ceivers, or, as stated in the language of the motion, for
"extending the receivership to the trust company, the
"mortgagee in the general mortgage. I confess that
"I do not wholly understand why such an order as that
"is asked, and I cannot appreciate what counsel mean
"when they say make the receivers receivers for the trust
"company, the mortgagee.

"As we look upon it, the receivers are not receivers
"for either party. They are simply the hand of the
"court. In the process of the litigation the court has
"taken possession of the property, and holds it neither
"for the mortgagor nor the mortgagee, and it matters
"not for the ultimate determination of the suit at whose
"instance the receivers were appointed. They act for
"neither party. They represent neither party. They
"stand here simply as the hand of the court, holding the
"property for disposition at the end of the litigation for
"the benefit of all.

"So I cannot see what can be gained as a legal propo-
"sition by a new order of appointment extending the
"receivership, as counsel say, to the trust company, the
"mortgagee. The receivers will have no greater power,
"no different power, would owe no different duty, and
"would be no more and no less subject to the orders of
"this court than they are now, and certainly they would
"have no right, in the operation of their trust, to extend
"favors to the one side or the other."

If any substantial difference in the obligation of the receivership had previously existed it could hardly have survived this announcement. After that refusal could it

fairly be said that the receivership "was not at the in-"stance of mortgagees, nor were they seeking fore-"closure of their mortgages," or "that they were asking "nothing at the hands of the court," or that "they were "not asking it to take charge of the property, or thus im-"pliedly consenting to its management of the property "for their benefit"?

Kneeland v. *American Loan and Trust Co.*, *supra*.

The denial of the request of the general mortgage trustees for their own receivers was not based on their lack of right to that relief, for such a claim was not capable of dispute, but on the supererogative character of the application. By such re-appointment the receivers would "have no greater power, no different power, would "owe no different duty" (*supra*).

Hence we may assume, that, after the general mortgage bondholders asked by their cross-bill the appointment of a receiver, appeared by counsel, took part in the selection of the profitable lines made by the receivers and assented to the order of June 28, 1884, confirming such selection, the receivers represented the general mortgage bondholders. Indeed, in *Union Trust Company* v. *Illinois Midland Railway Company*, 117 U. S., 434, we have the highest authority for treating the action of the subsequent mortgagees throughout this controversy as creating an estoppel *in pais*.

Mr. Justice BLATCHFORD there said:

"In this connection it is objected that in those cases the suits were foreclosure suits brought by trustees under mortgages, and that a different rule should obtain in a case where the trustees or the bondholders do not come into court initially, asking the aid of equity in the

appointment of a receiver. It is said that the Hervey suit was not such a suit. But the co-plaintiffs with Hervey were judgment creditors of the Paris and Decatur Company, with executions returned unsatisfied. The bill set out the precarious condition of all the property held and used by the Illinois Midland Company, and the necessity for a receiver in the interest of all the creditors of all four of the corporations to prevent the levy of executions on such property; and it prayed for a judicial ascertainment and marshaling of all the debts of all the corporations, and their payment and adjustment as the respective rights and interests of the creditors might appear, and for general relief. The plaintiffs set forth that they represented a majority of the stock in all the corporations. This bill was quite sufficient to enable a court of equity to administer the property and marshal the debts, including those due the mortgage bondholders, making proper parties before adjudging the merits" (page 458).

* * * * *

"The terminal expenses and track rentals of the two roads, other than the Paris and Decatur, were always charged by the receivers against the combined Illinois Midland road. The view taken by the commissioner and the circuit court was that the receiver took the roads as he found them, each incomplete, and no one reaching any important point, and was obliged to continue the leasing arrangements of the Illinois Midland company so as to have a continuous line from Peoria to Terre Haute, which he operated as an entirety. The commissioner stated his conclusions thus: 'In the operation of the road no separate accounts of receipts or disbursements for each section, nor of the amount of business contributed by each section, nor of the extent of the use of each road, in the transaction of the various items of business taken at the several stations, were kept, nor, indeed, has it been possible to keep such accounts. The Paris and Decatur road received its share of the benefits accruing from the use of the leased lines; the exact relative proportion of benefits to each sectional road it is impossible to ascertain. The operating expenses have been incurred in the management of a sin-

gle undertaking for the common benefit of all parties in interest. The use of the several leased tracks was necessary for that common undertaking. Without the use of the leased tracks the road could not have entered either of its terminal points nor the city of Decatur, which was equally essential. Neither of the sectional roads enters any one of the three main points on the line. Indeed, without the leased lines the operation of the road, or either of the sections, would have been impracticable. And it seems to me that the rentals for the use of the leased lines were incurred as much for the common benefit as were the expenses for employes and supplies along the line. If the management of the road had been so profitable as to have left a net income to apply on the mortgage debt, the Paris and Decatur bondholders would have been entitled to their proportionate share of the income derived from the use of the leased lines; they could scarcely have expected that without contributing to the payment for the use of those lines.' These views apply equally to the terminal facilities furnished by the leasing roads. (page 466.)

* * * * *

"Independently of this, it is entirely sufficient to rest our conclusion on the principle that non-action on the part of the Paris and Decatur bondholders and their trustees, which allowed the court and the receivers to go on during the entire litigation contracting debts in respect to the whole line operated as a unit, and administering the property as one, under circumstances where, as shown, it was and is impossible to separate the interests as to expenditures and benefits in respect to the matters now questioned, and where important rights have accrued on the faith of the unity of the interests, amounts to such acquiescence as should operate as an estoppel" (p. 468).

Equally applicable to the consideration of this receivership as originating at the instance of the Wabash company, is the above quoted language and reasoning of this court in

Kneeland v. *American Loan & Trust Company*, 136 U. S., 98, 101, 102.

In fact when an election is once made by the receivers it is wholly immaterial at whose request the receivers were appointed.

II. The failure of the Clarinda branch, according to the receivers' statements, to produce net earnings:

Measured by the first detailed report filed March 20, 1885, by the receivers, the operating expenses of this branch had on December 1, 1884, exceeded its earnings by $4,624.69 (fol. 166), which deficit was not decreased up to its surrender on April 16, 1886. These accounts were kept upon a mileage basis. The Clarinda branch was a short spur or feeder twenty-two miles in length, and it is apparent that its actual value to the receivers was not shown by such accounts. The inadequacy of those reports as a test of the value of the separate lines has thus been commented upon by the court, under whose directions the receivers were acting:

"In apportioning the earnings of this single corporation among these various divisions the general rule is to apportion them upon a mileage basis. The freight which passes over that branch may pass on that branch but a short distance, and then, perhaps, a long distance over the main line. All that is credited to the branch is the mileage proportion of the freight charges, and yet the business which these branches have poured into the main line may well be the very business which has made those main lines paying lines. It may not be possible accurately to determine the amount of such business. I see tables have been prepared indicating that several million dollars of business has passed over those branches on to the main lines, and which but for those branches might never have touched the main lines. In that aspect they are operated for the benefit of the entire property. As my brother THAYER well stated in our consultation, to treat those non-paying branches as useless incumbrances, which should be cut off, would be like damming up the little branches of the Missis-

sippi, because they are not navigable as the mighty river into which they pour. It is the combination of their smaller currents which renders the mighty volume of the Mississippi, and makes it navigable; and so it was the combination largely of the little currents of business, which flowed from those branches in *upon the main lines which made them paying lines, and no man with the figures before him can now say how much of the business of the main lines is and was due to the fact that these branches were kept in operation.* So that, both in law and in equity, the obligations of this single consolidated corporation were enforceable against each and every part of its properties; that is, certainly upon each and every part of the properties *owned* by it. *There may be some difference as to the leased lines, and some other questions may arise there.*"

BREWER, J., *Central Trust Co.* v. *Wabash, St. Louis and Pacific Ry. Co; In re* Bonner, Intervenor, 30 Fed. Rep., 332, 334–5.

The pertinency of this language to the present appeal is obvious. The grain and cattle received for shipment upon the Clarinda branch by the receivers were hauled to Detroit or Toledo, the eastern termini of the system. To charge that branch with all the initial expense of such shipments, and yet credit it only with a mileage *pro rata* of the receipts from the entire haul, is unfair in the extreme in calculating the value of the branch to the receivership.

III. The directions regarding the conduct of the receivership embodied in orders entered *pendente lite:*

(1). The order of May 29, 1884, appointing the receivers:

This has been already referred to, and in brief directed that the entire system of railways be taken possession of

and operated, and that all rentals accrued or to accrue for the use of leased lines, and all operating expenses be paid (fols. 116, 117).

(2.) The order of June 28, 1884:

This was made on the petition of the receivers for advice as to the "payment of interest on certain enumerated "bonds" on "certain valuable lines of railroad," including the Clarinda branch. It was alleged by the receivers, and this allegation constituted the gist of the petition, that "the existence of said consolidated (Wabash) company "as an entirety, with all its rights and franchises, will be "preserved and the rights and interests of its several "creditors will be best protected and secured by paying "from time to time the interest upon the bonds and other "obligations secured by mortgage upon the several lines "and divisions last aforesaid." (fol. 133.) All of these roads were said to have earned during the preceding five years, or since their construction, more than enough to pay all operating expenses and interest charges, and the receivers stated their belief that they could continue to meet such expenses and charged from the incoming rents and profits of the property in their possession. On a reference, this expression of belief was supported by the testimony of one of the receivers and the general manager, and the master's report, which was subsequently adopted by the court, naturally followed these representations by directing payments of this interest out of the incoming rents and profits, after meeting such other obligations as they had been directed to discharge by the order of appointment. Among these prior obligations, it will be remembered, were *rentals* and *operating expenses*, and by the terms of the former order, income was to be expended in the following manner:

(1) for balances due other railroads, (2) rentals on leased lines, (3) labor and supply claims. Labor and supply claims or "preferential debts" were thus expressly subordinated to the rentals, (fols. 116, 117.) Moreover, the fact remains, that the direct query propounded by the receivers was whether this interest should be paid. The answer given was a positive affirmative, and many payments were made accordingly.

The construction of this order is the leading question in this appeal. The distinguished judge by whose direction it was entered, held on the first hearing in the court below, that "intervenor had a right to rely upon "it and expect the payment of his rent until some other "order was made." (fol. 69.) In the opinion on final hearing a different view was taken by the same judge, and after reciting the order (fol. 85), the opinion proceeds as follows:

"It will be observed that the receivers are directed to pay this interest, 'after meeting such other obligations as they have been directed to discharge by the former orders of this court.' Now, only one month before and in the order appointing the receivers they had been required to pay first, the expenses of operating and maintaining the property in their charge, and, second, the debts of the Wabash company incurred for labor and supplies during the six months preceding the receivership, so that at the time the order to pay interest was entered, there was a former and existing order to pay what is commonly known as preferential debts. It cannot be that this order was intended to substitute or set aside former orders; indeed, it is expressly made subject to them, but it is a part of the history of this foreclosure that there were at the commencement of the receivership over three million of these preferential debts, and at the time when the sale was made under the foreclosure there still remained over two million unpaid. The receivers were never able to pay these

preferential debts; and as this order of June 28th to pay interest is expressly subordinated to the former order as to preferential debts, it follows that they were never called upon to pay this interest, and the intervenor never had a perfected claim therefor. Not only is this order of June 28th subordinated to former orders; it expressly directs the source from which payment is to be made. It is 'from the incoming rents and profits of said property,' and again, 'from whatever balance may remain in their hands.'"

Next to the order appointing the receivers, the order of June 28, 1884, was by far the most important interlocutory order in this Wabash litigation. The opening statement of the receiver's petition was that they were without funds to pay interest and rental due June 1, 1884, upon the underlying mortgages upon the Havana and Indianapolis divisions, or upon the general mortgage bonds. Notwithstanding their want of ready funds, they asked the court to order the payment of rental and interest upon the twenty-seven underlying mortgages and leases covering the main stem of the Wabash system and including all the profitable lines in their possession. These lines, the receivers, acting at the request and for the benefit of the general mortgage bondholders, wished to preserve and continue to operate as a system. To any such plan it was vital that the accruing rental or interest be provided for, else rapidly ensuing foreclosure of the underlying mortgages would entirely wipe out the security of the general mortgage bonds. The order as entered was treated by all parties as pledging the faith of the court that such rentals and interest would be paid as soon as practicable. Under this order nearly $2,500,000 of such rental and interest was paid by the receivers. On all the lines selected by them, which lay east of the Mississippi, all rental and interest was paid under that order until Janu-

ary 1, 1887, when all those lines were taken from their possession by order of the federal courts in Illinois (Omaha division, rec. fol. 131), and on all the lines selected by them which lay west of the Mississippi, with the single exceptions of the Clarinda branch and the Omaha division, all rental and interest was paid under that order until April 1, 1887, when all the last named lines were surrendered by the receivers to the purchasers at the foreclosure sale under the general mortgage. During all these times, the preferential debt was in whole or in part unpaid. In fact the purchasers as one of the conditions of sale paid off all of it outstanding at the end of the receivership.

In view of these facts, we cannot agree with the court below that "as this order of June 28th to pay interest is "expressly subordinated to the former order as to prefer- "ential debts, it follows that they (the receivers) were "never called upon to pay this interest and the intervenor "never had a perfected claim therefor."

If intervenor had no "perfected claim," and "they (the "receivers) were never called upon to pay" any bonded interest, how could they lawfully pay, as they did, not only intervenor's rental interest due August 1, 1884, but in addition more than $2,000,000 on precisely similar claims for interest and rental presented under the same order? The authority of the receivers to make these large and numerous payments has never been questioned. Their quarterly reports showing such payments have always been promptly confirmed. Except intervenor's rental and that due for the Omaha division, the order of June 28th has been carried into effect by all parties in good faith. With or without proper cause, all parties accepted it as pledging the court to the payments it directed. Intervenor

so understood it, and acted upon it accordingly by taking no steps to withdraw the Clarinda branch. Under intervenor's lease he might have applied to the court on August 2, 1884, for its cancellation and the surrender of the demised premises. Relying upon the order of June 28th, this he did not do; and judging from the result of his litigation in the court below, his confidence in that court was so misplaced as to result in actual hardship to his *cestuis que trustent*. That the intervenor was justified in relying upon this order as eventually securing his interest, is supported by the fact that after an exhaustive argument made by counsel on the first hearing in the court below, the construction put by the intervenor upon the order did not vary from that placed upon it by the learned judge in his opinion, reached at that hearing. Had it been intimated on June 28, 1884, to the parties to this litigation that the receivers could not lawfully pay any of the rental or interest described in that order until all the preferential debts had first been paid, there would have been instituted within sixty days thereafter some twenty-seven different suits for the foreclosure of those underlying mortgages, the precise calamity which all parties thought had been avoided by the order in question.

But if, however, the order of June 28 is to be strictly construed, appellant confidently submits that it is quite capable of another and less strained construction as much in his favor as the court below finally construed it in favor of the receivers. By the terms of the order, payment of the Clarinda branch interest was made a *liability* of the receivers, to be paid "from the incoming rents and profits of the "property in their charge" as soon, it is now said, as the preferential debts had been discharged. Conceding such to be the intent of the order, it cannot be denied that

when this cause was heard in the court below, in March, 1889, the time for payment had already arrived. Part of the preferential debts had been paid by the receivers, the balance had been paid by the purchasers. Among "the "profits of the property" which came within the control of the receivers, was the *covenant of the appellee to discharge all the unpaid liabilities of the receivers.* This covenant, under the corporate seal of the appellee, was executed in consideration of the delivery by the receivers to the appellee of all the assets and property belonging to the receivership. (Fol. 306) Among the unpaid liabilities of the receivers assumed by the appellee under its foregoing covenant, is the sum owing by the receivers for their use of the Clarinda branch. Such a construction is not only reasonable and equitable, but it also far better harmonizes with what was clearly the actual intention of the order in question.

As further showing that the order was not intended to have the effect afterwards given to it by the court below we have included in an addition to the record three further orders of the court, which have been selected almost at random from the numerous orders requiring payment of claims allowed against the receiver:

(1.) On June 30, 1884, the master reported that if $27,920 then overdue upon the Eel River lease was not paid *by the day following*, the lease might be forfeited, and the receivers lose the road, a result which "would work "serious and irreparable injury to the railroad system of "the complainant." The court's order was as follows (add. rec., fol. 24):

"It is ordered that the receivers herein, from the incoming rents and profits of the property in their charge, after meeting such other obligations as they have been directed to discharge by the former orders of this court,

pay from whatever balance may remain in their hands the rental which became due June 1, 1884, to the Eel River Railroad Company, amounting to the sum of twenty-seven thousand nine hundred and twenty ($27,920) dollars."

This payment was made at once and forfeiture thus averted. (Omaha division rec., fol. 141.)

The phraseology of this order and that of June 28th are identical, and we content ourselves with observing that it certainly occurred to no one, *at that time*, that the Eel River rental payment was deferred until current income had first wiped out the preferential claims.

(2.) On November 29, 1884, the receivers sought leave to pay a balance of $112,000 due for equipment sold the old Wabash Railway Company, and used by the receivers, and the court directed as follows (add. rec., III, fol. 26):

"And thereupon it is ordered that the receivers herein, from the incoming rents and profits of the property in their charge, after meeting such other obligations as they may have been directed to discharge by the former orders of this court, pay from whatever balance may remain in their hands to Alexander M. White the sum of one hundred and twelve thousand dollars, with interest at the rate of seven per cent. from the first day of July, 1884, the same being the amount remaining due said White, and secured to him by the terms of a certain chattel mortgage of rolling stock made by the Wabash company, bearing date October 17, 1878."

The language being again identical with that of the order of June 28th, the receivers acted upon it at once by paying White $62,000 in cash and $50,000 in receivers' certificates issued under the order of June 6th. (add. rec., III; fol., 9.)

(3.) In Iowa, judgments against a railway company, based upon injuries to person or property, have priority over existing mortgages. Many claims of such nature

having been filed with the receivers, they applied to the court for instructions, and on January 12, 1885, the following was entered of record (add. rec., III; fol., 28):

"Ordered that the receivers herein from the incoming rents and profits of the property in their charge, after meeting such other obligations as they have been directed to discharge by the former orders of this court, pay, as soon as practicable, all judgments, with lawful interest thereon, together with costs, rendered in the State of Iowa against complainant, or against the receivers herein, on account of any injuries to person or property in said state, and adjust and pay, on the approval of the master herein, all claims of the character aforesaid which accrued against complainant prior to the appointment of the receivers herein, upon which actions have not been brought, and which may, if prosecuted to judgment, become first liens upon the property in their charge."

Under this order, the receivers, from time to time, as they became in funds, paid judgments and claims of the nature in question to a very large amount. Their authority so to do has never been questioned.

No little light is shed upon this question by a subsequent order of the court. Under the order of June 28th, the receivers at once began and continued, as rapidly as their finances would permit, to pay bonded interest, amounting to $2,525,154 per annum. After making many large payments, including $13,720 past due at the time of their appointment, a question arose as to whether such past due interest was included in the order of June 28th. Upon application to the court, on April 13, 1885, (the *same day* on which oral arguments were being made to the court upon the matter of the cancellation of the leases of the non-paying lines), their previous payments of all such past due interest were ratified and the order thereupon proceeded as follows (add. rec., III; fol., 31):

"And it is further ordered that the receivers pay out of the incoming rents and profits of the property in their charge, as they may be presented for payment, all coupons which matured prior to their appointment, of bonds the coupons of which, maturing since their appointment, they have been instructed to pay."

If there was the shadow of a doubt lurking in the language of the order of June 28th, surely it was dispelled by this order.

The orders to which we have called attention, taken separately or together, when fairly considered, were more than sufficient to lull the underlying mortgagees and lessors into inactivity based upon an honest belief that their interest would be paid until some contrary order was entered.

One additional feature remains to be considered. On June 6, 1884, about one week after their appointment, the receivers filed their jointly verified petition, stating that in order to pay the preferential debts which the order of their appointment required them to pay, they would need at least $2,000,000 more than was in their hands, and prayed leave to issue receiver's certificates in that amount and for that purpose. (add. rec., fol. 1–5.) On the same day the court acted upon the petition and entered an order, which, after reciting the material allegations of the petition, directed the receivers to issue receivers' certificates to an amount not exceeding $2,000,000, and from the proceeds thereof to pay in full all the preferential debts. These certificates, however, for some reason, failed to meet with ready sale. In point of fact, although not affirmatively so appearing from this record, capitalists and banks were advised by counsel that the exercise of the court's power in issuing such obligations upon a bill filed by the insolvent Wabash company, was

in excess of all precedents. Doubts as to the necessary adverse citizenship of the parties, were also current, as affecting the jurisdiction of the court below in entertaining the original bill of the Wabash company. But whatever the causes, the receivers had not on June 26, 1884, floated a single dollar of the certificates authorized by the order of June 6th, (add. rec., fol. 9) and the extent to which such certificates could be negotiated was still an open question. The court and all parties doubtless expected that in time the entire issue of $2,000,000 would be disposed of, an expectation more or less reasonable as shown by the fact that by November 24, 1885, $955,000 and on December 31, 1886, $1,337,804, in receivers' certificates was outstanding.

Bearing in mind then, these facts as to the receivers' certificates, let us briefly view the situation of affairs when the receivers applied to the court on June 26, 1884. The preferential indebtedness on their appointment was $4,378,233.49. (Omaha division rec., fol. 158.) They came into possession of assets amounting to $1,330,943.-53 (same rec., fol. 159), thus leaving the net preferential indebtedness of $3,195,281.99. They were destitute of any other funds except such as would accrue from the operation of the lines of railroad in their charge. They desired to preserve and hold together as a system, *for the benefit of the general mortgage bondholders* and the unsecured creditors, certain main or stem lines, known to be profitable, but already subject to twenty-seven underlying mortgages, upon which there were annual interest charges amounting to $2 525,154, payably in half yearly instalments. The preferential claims were in the words of the court below "of that character of indebtedness

"which, by the decisions of the supreme court, was pre-
"ferred to all mortgages. * * * It was in equity
"chargeable upon all of its property." The receivers being, at the date of their appointment, almost wholly without funds, this indebtedness would ripen into statutory liens, under foreclosure of which the entire property might have been swept away, or the holders of this indebtedness, without the assistance of statutory lien, might in this very proceeding, have had the entire property of the Wabash company sold to satisfy their claims. It was apparent that the preferential indebtedness must be first paid, and the court so ordered when appointing the receivers. During the first month of the receivership, it became apparent that a great and unknown length of time must elapse before the net earnings of the receivership, even if not used for any other purpose, would be sufficient to pay these preferential debts. The receivers' certificates found no ready market, and it was clear that their negotiation would require time. The twenty-seven underlying mortgagees were each and all expecting and preparing for default in payment of their bonded interest. They were turbulent, and grew still more so as it became known that the certificates could not be negotiated. Their mortgages were severally first liens upon distinct lines of railroad. The Wabash company being notoriously insolvent, prolonged continuity of the system availed the underlying mortgagees nothing. But in the preservation of the *profitable lines as a system* lay the *sole* security of the holders of the general mortgage bonds. If the net earnings of the receivers were to be used to pay the preferential debts, the interest being unpaid, foreclosure of every underlying mortgage was inevitable, the profitable lines would be

taken from the receivers and disintegration of the system would at once ensue. If the net earnings were to be used to keep down interest upon the underlying mortgages, the preferential claims, being unpaid, would pass into statutory liens, or sale by the court, which also would engulf the property and disrupt the system. Receivers' certificates, the usual recourse, could not be negotiated. The necessity for immediate action was apparent. In their dilemma, the receivers adopted the only possible course, and after carefully selecting such of the lines as they wished to keep, and obtaining the consent of the general mortgage bondholders, *sought to pledge the faith of the court* that interest upon the bonds secured by the twenty-seven underlying mortgages upon these lines would be paid until the time in the future when an order to the contrary should be entered. The *open and sole object* was to *induce* the twenty-seven underlying mortgagees named in the order of June 28, 1884, to *trust the court* for the payment of their interest, and allow the *first* earnings of the receivership to be used for the payment of the preferential debts. This object was attained by the order of June 28, which ratified the proposition of the receivers. Under this decree the twenty-seven underlying mortgagees and the bondholders by them represented, rested secure; and notwithstanding the fact, shown fully by the Omaha division record, that at various dates prior to April 16, 1885, default had been made in the payment of interest upon nineteen (including the Clarinda branch,) of the twenty-seven mortgages on the lines selected by the receivers, not a single one of these nineteen underlying mortgagees, at any time before the order of April 16, 1885, attempted in any way, either by foreclosure or

otherwise, to seek the enforcement of his legal rights. Mere delay in payment of their interest furnished no cause for suspicion, nor grounds for belief that the decree of June 28th did not secure the ultimate payment of their interest. All parties knew the preferential debts must be first paid, and all knew that the receivers had not on June 28, 1884, nor would they have for some time thereafter, sufficient funds with which to pay such preferential claims. All these facts were considered, and the order and promise of the court was "to pay the interest "as the same matured, *or as soon thereafter as prac-* "*ticable.*" Under this order, the holders of the general mortgage bonds secured the vital relief they so pressingly needed. This decree at once enabled the receivers to use all their income in paying the preferential debts, and at the same time *postponed indefinitely* the foreclosure of the underlying mortgages upon *all* the lines which the receivers wished to retain in the system. It operated precisely as if the receivers had issued certificates for the payment of the interest upon the bonds secured by the twenty-seven underlying mortgages, and thus were able to apply all their earnings to the payment of the preferential debts. The order of June 28, 1884, was, as such certificates would have been, a promise to pay the interest as soon as within the power of the court; and upon behalf of Mr. Seney and the Clarinda branch bondholders, we insist that to now so construe that order as to deprive intervenor of the payment he asks thereunder, would be as inequitable as to repudiate receivers' certificates, had they been issued therefor.

If it had been even supected from the order that no rentals or interest on the twenty-seven underlying mortgages were to be paid by the receivers until enormous preferen-

tial debts, then unknown in amount but estimated to be in excess of $2,000,000, were first paid, the sole object of the receivers and general mortgage bondholders in securing the order would have been frustrated, since in default of the payment of such rental and interest, foreclosure of the twenty-seven underlying mortgages would have promptly ensued. With one or two small exceptions, the present railway of the appellee consists of the same lines held together by this order, and subsequently sold under the decree of sale. On every other of these twenty-seven mortgages (excepting the Omaha division) all interest was paid, more or less promptly after maturity, under the sole authority of the order of June 28th. It is inequitable to now subject that order to a construction which will not only defeat intervenor's claim, but render unlawful every interest and rental payment made by the receivers. The order doubtless might have been drawn with more clearness, but it was intended to direct absolute unconditional payments; it has been so accepted and acted upon by all parties, and the appellee, the successor in interest of the general mortgage bondholders, for whose benefit it was entered, is now estopped from contending for any other or different construction.

To summarize, we earnestly contend that *the court, by its order June 28, 1884,* GUARANTEED *the payment of interest until otherwise directed, upon the twenty-seven underlying mortgages named in the order. Such guaranty continued as to each until terminated by some subsequent order.*

It is impossible to doubt but that such was the *intention* of the order of June 28th. Its language and attendant circumstances permit absolutely no other construction. The receivers prayed for an absolute order directing such payments, and the order entered was accepted by all parties as being of such nature.

(3.) The instruction given October 15, 1884, regarding the Havana division bonds (fols. 153–157).

The counsel for the receivers laid much emphasis in the argument below on the fact that the court had announced its disposition against paying interest on the bonds of any division that did not produce independent net earnings sufficient in amount to meet such interest. There are essential differences between that case and the present one. (*a.*) Payment was then asked from the receivers of interest on defaulted bonds, chiefly of the *Wabash, St. Louis and Pacific Railway Company*, and which the receivers were under no obligation to make. Payment of interest upon such bonds was at best mere speculation, and the court declined to enter into it. Here a lease, existing at the creation of the receivership, is involved, and the court must be presumed to have recognized the established rule of law. (*b.*) While this very application was pending, the receivers had just paid the rental of the Clarinda branch, maturing August 1, 1884. In other ways, too, it is evident that the disposition of the Havana division application was not intended to reverse the well-considered directions of the order of June 28, 1884.

(4.) The announcement of April 16, 1885:

In March, 1885, the responsibility attached to the continued operation of the leased railroads seems for the first time to have presented itself to the receivers. Whatever the moving cause, on the 20th of that month they filed a petition in the consolidated action, stating "that, *since* "*they took possession* of the system of railroads previously "operated by the Wabash, St. Louis and Pacific Rail-"way Company, the earnings of many of the branch and "leased lines thereof have not been sufficient to pay the

" operating expenses, interest on their mortgage bonds, " and *the rentals contracted to be paid* by the Wabash, St. " Louis and Pacific Railway Company in the several " contracts and leases *under which said lines were ac-* " *quired*" (fol. 163.)

The terms of the leases of the various branches were thereupon set forth at some length, with a statement of their earnings and operating expenses for the six months ending November 30, 1884, showing a deficit for that period, in the case of the Clarinda branch, of $12,544.69, or, "not including any charge for rental," of $4,624.69 (fol. 166). The petition concluded as follows:

"Your receivers, therefore, pray your Honors to make " such orders with respect to the future operation of " said lines, and concerning the payment of the respective " rentals agreed to be paid by said Wabash, St. Louis " and Pacific Railway Company in the several leases and " agreements aforesaid as to your Honors shall seem " meet" (fol. 166).

Regarding the remaining branches, as to which the receivers sought advice, the court rendered a full opinion entitled "*In the Matter of the Application of the Re-* " *ceivers for the Cancellation of Certain Leases*," which was directed to stand as the order of the court with respect to the matters therein referred to (fol. 167). In the course of that opinion the circuit judge said:

" This Wabash road is composed of many subdivisions. While it is a single corporation to-day, yet into it have passed many corporations and many separate railroad properties. In administering such a consolidated property, the court must look at not merely the interest of the mortgagee in this general mortgage, or of the mortgagor as a single entity or corporation, but also the separate and sometimes conflicting interests of the various subdivisions and their respective incumbrances,

and, back of all that, the duty which every railroad corporation owes to the public; for underlying the rule which the supreme court has laid down in respect to the payment by receivers when they take possession of railroad property of prior unsecured debts recently accrued, runs the thought, as expressed by the supreme court, that a railroad corporation owes a duty to the public, which has given it its franchise and enabled it to construct its road—the duty of operating that road for the benefit of the public. While that may not be what you may call an absolute duty, enforceable under all circumstances, it is still a duty to be regarded and enforced by the courts when they take possession of railroads through their officers; and that duty is not limited to the operation of merely that particular fragment of a road which is pecuniarily profitable in its operations, but it extends to the road as an entirety, and to all its branches, all its parts differing in that particular from the duty which would rest upon the court if it had simply taken possession of property used for private purposes, manufacturing or otherwise, where the single question might well be said to be one of pecuniary profit. This Wabash road, as a system, was in operation, a going concern, from one end to the other, as such discharging its duties as best it could to its various creditors. This court, at the instance of the corporation, and to preserve the integrity of the system, took possession of it by its receivers. It took possession of it as a going concern, and, so far as it is reasonable and practicable, it should continue it as a going concern until it surrenders it to whoever may be the purchasers or future holders of it" (fol. 169).

Having thus determined that no leases should be canceled, he then proceeded to pass upon the receivers' petition as follows:

1. Subdivisional accounts must be kept separately (fol. 171).

2. "Where any subdivision" (*i. e.*, a branch railroad acquired by lease or consolidation) "earns a surplus over

"expenses, the rental or subdivisional interest will be "paid to the extent of the surplus, and only to the ex- "tent of the surplus.

3. "Where a subdivision earns no surplus, simply "pays operating expenses, no rent or subdivisional inter- "est will be paid. If the lessor or the subdivisional "mortgagee desires possession or foreclosure, he may "proceeded at once to assert his rights. While the "court will continue to operate such subdivision un- "til some application be made, yet the right of a lessor "or mortgagee whose rent or interest is unpaid to in- "sist on possession or foreclosure will be promptly rec- "ognized.

"That, it is true, *may work* a disruption of the "system, * * * but the proceeding for dis- "ruption will come from the subdivisions. *The court* "*is not sloughing off branches*, tearing the system in two, "but the disruption, if it comes, will come from those "who *seek separation* and have legal right to do so." (fol. 172.)

4. "Where a subdivision not only earns no surplus, "but fails to pay operating expenses, as in the St. Joseph "and St. Louis branch, *the operation of the subdivision* "*will be continued*, but the extent of that operation will "be reduced with an unsparing though a discriminating "hand."

In view of the facts disclosed by the present record it is clear that the court's disposition of the receivers' application was not intended to be, and could not have been, conclusive of the intervenor's claim; but considering it as a general statement that result cannot be predicated of it.

(*a*) The opinion was not intended as an adjudication

upon ultimate rights. It was simply an interlocutory order settling certain aspects of current administrative policy. The conclusion which it expressed was that the accruing income was to be *currently* applied only to specified purposes. All other questions were reserved for determination in the orderly course of procedure. Yet even when in obedience to the requirement of the court for an early termination of the receivership (fols. 303, 304), a final decree was rendered, it was found impossible to incorporate in it a ruling on more than a small fraction of the issues which the ingenuity of the defaulting company had attempted to raise. Hence, to protect the parties, and at the same time to lay the way to escape the burden of the receivership, the following express reservation was inserted:

"It is further ordered and adjudged that this decree or any sale made thereunder shall not *in any way prejudice or affect* the rights of parties to or persons interested in certain mortgages, deeds of trust, leases and contracts hereinafter set forth, but all the rights of such persons and parties are hereby reserved to them. The deeds of trust, mortgages, leases and contracts in regard to which such reservation is made are as follows" (fols. 210, 218, 219.)

(*b*) Nor was the opinion operative as a cancellation or surrender of the leases.

The receivers had applied for advice as to whether they should continue to operate certain non-self-supporting lines, and the order was entitled "In the Matter of "the Application of the Receivers for Cancellation of "Certain Leases" (fol. 167). The answer of the court in effect was, "No; the integrity of the system must be "maintained. Continue the operation of all the lines "until any lessor or mortgagee whose contract has ri-"pened into a possessory right comes to demand his "property."

(*c.*) The court itself relied greatly upon its inherent power to maintain the system as a "going concern," even though to do so would neces itate that last resort, the issue of receivers' certificates.

"Suppose we take possession of a single short line (and we have in one or two other cases), the continuance of that as a going concern is emphasized more than once by the supreme court as a duty, as a reason for paying prior indebtedness and also as a reason for issuing receivers' certificates. Stop operating it and it becomes a dead concern; its connections are broken up and its value is impaired. Therefore, to preserve that value the courts have said that it has a right in a limited degree to issue receivers' certificates, and if that be true where the court has but a single line, it is equally true where it has a road with various branches and as to all of those branches. The value of any branch abandoned is diminished, and the court may not consider simply the interests of the consolidated company, the mortgagor, and the trust company, the mortgagee. It is bound to regard the interests of each one of these subdivisions that went into the consolidated company and thus into the receivers' hands; and if the court may and ought to issue receivers' certificates in order to keep a single line a going concern, so, having possession of this system with its various branches, for the same reason and by the same means it should keep each one of them in operation" (fol., 173).

(*d.*) But, even in the improbable event of the court having intended to signify its disavowal of the obligations created by the lease, the court, equally with the receivers would be estopped to repudiate the burdens, while enjoying the fruits of the contract. The receivers all this time were in the physical possession of the property, collecting its income and deriving every other advantage which that occupation might entail.

In construing the obligation of a railway company and a receiver with respect to an existing contract made by

the predecessors of the company, this court has recently had occasion to say:

"It is not necessary that a party should deliberately "agree to be bound by the terms of a contract to which "he is a stranger, if, having knowledge of such contract, "he deliberately enters into relations with one of the par- "ties, which are only consistent with the adoption of such "contract."

Wiggins Ferry Co. v. *Ohio & Miss. Ry. Co.*, 142 U. S., 396, 408.

It is not enough for one occupying leasehold property to say: "I will use this and appropriate its revenues, "but not pay rent. If, however, any one demands pos- "session and establishes a right prior to mine, I will yield "in his favor." Any trespasser might adopt that attitude; but surely it would not result in immunity from his legal liability. If the presumption of knowledge of the law is to be acted upon, it could never be more justly applied than in a case of a court; and, in assuming these leases, we cannot but conclude that the court understood the obligations which its receivers were entering upon, and felt the force of the considerations to which the circuit judge gave voice in October, 1884, when passing upon a kindred question arising in this very litigation:

"And in this conclusion permit me to say, generally, in reference to receiver's obligation, I think the court should be very slow in authorizing or directing its receivers to enter into obligations; none should be created which the necessities of the case do not absolutely require. It is not the function of the court to go into the business of railroading or manufacturing and have property on its hands continued there indefinitely. Whenever, from the circumstances of the case, it is found necessary to take possession of property, it should pre-

serve it and manage it so far as is necessary to keep it intact and free from loss or injury; and, if need be, in order so that it may issue receivers' certificates or direct the receivers to issue other obligations. Whenever it does so, I think it is the imperative duty of the court to see that these obligations, thus authorized or directed, are held sacred to the very letter and spirit; that there should not be anything for outside litigation, but that the court, having *authorized or directed* these obligations and contracts to be entered into, should see to it that they are sacredly performed; and, though afterwards it may seem that these obligations were unfortunately created or without sufficient consideration, still there is no duty more sacred upon the court than to see that these obligations are kept."

Wabash, St. Louis and Pacific Ry. Co. v. *Central Trust*, 22 Fed. Rep., 271.

(*c.*) Having deliberately elected, on June 28, 1884, to assume the Clarinda lease, the court and receivers were without power on April 16, 1885, to condition the payment of subsequent rental upon the earning capacity of that line. An election to assume the lease carried with it liability for the rental, whether the election proved profitable or otherwise. The lease must be assumed or repudiated. No assumption could be permitted with a liability terminable at the option of the receivers. It is not to be supposed that the order of June 28 was knowingly entered with a view of giving all the profits of the Clarinda branch to the receivers, and casting upon the intervenor all losses. We have discovered no reported case supporting the right or power of a receiver, after deliberately electing to adopt a lease, to curtail his liability by a showing that his choice was unwisely made. Having assumed intervenor's lease, the receivers became liable for the rental so long as they remained in possession, and we believe no authority can be cited in conflict with such

proposition. In its order in June 1884, the court explicitly provided for the payment of intervenor's rental. No reference to intervenor or to his lease is made in the order of April 16, 1885, and we think it may well be assumed, that, in the entry of the latter order, the court was not attempting to adopt an unprecedented course concerning the intervenor. The order may well be taken as limited to the uprofitable leased lines set apart as such in the former order.

IV. That the rental which may be recovered here is limited to the proportion which the railway in Iowa, the leasehold part, bears to the entire length of the branch.

The language of the lease negatives this proposition. In consideration of the leasing, the lessee agreed to mortgage the entire line from Roseberry to Clarinda at the rate of $12,000 a mile, amounting to $264,000 for the entire twenty-two miles, (fol. 11). These bonds were to bear interest at six per cent., payable semi-annually on the first days of February and August, and were to run forty years (fol. 10). As additional security for their payment, the lessor simultaneously issued its guaranty mortgage, embracing its reversionary interest and all rights acquired or to be acquired in the Iowa line; and the lease and the two mortgages, forming a single transaction, patently demonstrate that the main considerations moving to the lessor were (1) the immediate covenant for the construction of its railway, and (2) the permanent undertaking to preserve the integrity of the Clarinda branch.

The transparent intention indicated by the language of these instruments is supported by an equally plain motive, since the failure of the lessee to pay interest on any of the Clarinda branch bonds would have brought about a forfeiture of the lessor's entire property. Of what value

would it have been to the lessor to provide for the payment of a portion of the interest, when the satisfaction of all was necessary to give efficacy to the covenant?

Nor does the provision of the lease for the distribution of the earnings of the railway militate against our claim (fol. 13). That was an independent covenant of an administrative nature, and expressed only a part of the rental obligations. Yet even then, it will be seen, the lessee undertook absolutely to pay this bond interest, regardless of earnings from the leased line.

In considering this objection to intervenor's claim, it must be remembered that the order of June 28, in both spirit and letter, was a guaranty on the part of the court to pay intervenor, half yearly, "or as soon thereafter as "practicable," the sum of $7,920, being *interest on the Clarinda branch mortgage*. The liability was not in terms based upon the lease. Any failure to keep down the interest on that mortgage would cost the receivers and the general mortgage bondholders the further use of the entire twenty-two miles of road constituting that branch. The liability of the receivers under the order was a stipulated sum, and would necessarily be the same whether the Iowa portion was held under a lease or owned in fee by the Wabash Company. The objection is clearly an afterthought and without merit.

V. That the intervenor cannot maintain this proceeding because the Clarinda branch mortgage did not specifically embrace rents.

(1.) It is needless to discuss the position which the parties to this appeal would have occupied if any such question as that just propounded was inevitable. But what relevancy has the consideration of rights under a mortgage from a *lessee*, when the *lessor* also has sold and

conveyed "all its right, title, interest and estate" in the demised premises, "with all its rights, privileges and "franchises," and "all the other appurtenances thereto "belonging," acquired or to be acquired (fol. 30). The rents in dispute and all rights, present and future, under the lease were thus confirmed to the intervenor by the grant from the lessor company, and in this respect the guaranty mortgage merely fulfilled an explicit covenant of the lease (fol. 11). The all-inclusive character of such an "after acquired property clause" has recently been reiterated by this court.

Wade v. *Chicago, Springfield and St. Louis Railroad Co.*, 149 U. S., 327, 341.
Central Trust Co. v. *Kneeland*, 138 U. S., 414.

Our answer to this contention then, is that the intervenor founds his claim for rental on the fact that he is the grantee of the former owner of the rent, and that through this relation, incontrovertible privity of contract with the original parties to the transaction was established.

(2.) In this, also, as in the last preceding objection, the explicit wording of the order of June 28th, providing for the payment of a stipulated sum for each half year's use of the Clarinda branch, negatives entirely the possibility of the court having agreed to pay for the use of the branch, more than intervenor was rightly entitled to under the terms of some one of the three different instruments on which his rights were jointly predicated.

(3.) In his capacity, also, as holder of an unsatisfied deficiency decree of more than $200,000 arising on the foreclosure of the Clarinda branch mortgages (fol. 337),

the intervenor is entitled to receive towards the reduction of that decree whatever may be received on this rental claim.

Point IV.

THE INCOME COLLECTED BY THE RECEIVERS IS PRIMARILY CHARGED WITH THE PAYMENT OF THE INTERVENOR'S CLAIM, WITH RECOURSE, IF NECESSARY, TO THE CORPUS OF THE PROPERTY FORMERLY EMBRACED IN THE RECEIVERSHIP.

This proposition accords with the well-established rule of law, and has been recognized by the orders under which the surrender of the Clarinda branch was made, and the purchasers at the Wabash sale took possession (fols. 284, 210, 248, 288, 291, 306).

Fosdick v. *Schall*, 99 U. S., 235.

Finance Co. of Pennsylvania v. *Charleston C. & C. Railroad Co.*, 48 Fed. Rep., 188.

Atkins v. *Wabash, St. Louis & Pacific Railway Co.*, 29 Fed. Rep., 161, 169.

I. The claim has an inherent preferential right.

This arises from the fact that the rental was a legitimate and prudently incurred operating expense of the receivership. Without the Clarinda branch, as the record shows, the earnings of the receivership from its inception to the surrender of that division would have been largely diminished. The maintenance of the branch was necessary; and, if obligations contracted for the purpose of producing earnings are not to be classed as operating expenses, it would be difficult to accurately define that term.

II. The claim is entitled to rank equally with the other charges recognized by the order of June 28, 1884.

Referring again to the Omaha division record, we find that, acting under this same order, the receivers paid, subsequent to their cessation of Clarinda branch payments, the following interest or rental: North Missouri bonds, $840,000 (fol. 112); Real Estate bonds, $420,000 (fol. 112); St. Charles Bridge bonds, $120,000 (fol. 112); St. Charles Bridge 2d mortgage bonds, $54,390 (fol. 112); Brunswick and Chillicothe rental, $36,540 (fol. 116); St. Louis, Council Bluffs and Omaha rental, $75,120 (fol. 118); Boone County and Booneville rental, $14,000 (fol. 129); and Chicago division bonds, $112,500 (fol. 139), a total of $1,672,550, in addition to $38,500 applied for interest on the Indianapolis division bonds (fol. 148), for which no authority was granted by the order.

If equality is equity, the Clarinda branch merits similar treatment now. The only alternative is to admit that there has been a diversion of earnings, for which reparation should be made to the intervenor.

When the Wabash company passed into the hands of the receivers, the ordinary course of selling the assets and distributing the same among the creditors would have taken but a short time; intervenor would soon have had his railway with which to deal in the open market as best he might; but the general mortgage bondholders desired, and the court at their request, continued the operation of the property by the receivers, until April 1, 1887, a period of nearly three years. In order to hold together meanwhile the profitable lines covered by the twenty-seven underlying mortgages, the general mortgage bondholders agreed in substance with the court, to

pay or become liable for (1) the preferential debts, (2) the accruing interest charges on these underlying mortgages, and (3) all other unpaid indebtedness of the receivers. The court undertook to continue the operation of the property until the purchasers should be prepared to receive it, when possession was to be given such purchasers. These conditions were the usual and customary terms always imposed upon junior lienholders when the original or continued sequestration of the property is had for their protection. The purchasers and their successor, the appellee, have, except as to the Clarinda branch and the Omaha division, carried out in full the terms of their contract with the court. Their sole excuse for now refusing to keep their agreement as to the Clarinda branch is, that they were mistaken in their estimate of its income-producing capacity, and, therefore, should not, from a financial point of view, have included that branch among the lines they desired to retain and pay interest upon. This contention is, we think, without merit.

Point V.

THE DECREE OF THE CIRCUIT COURT SHOULD BE REVERSED WITH DIRECTIONS TO ENTER A DECREE IN FAVOR OF INTERVENOR FOR $27,060, WITH INTEREST FROM APRIL 16, 1886.

Dated October 2, 1893.

THEODORE SHELDON,
EDWARD W. SHELDON,
Of Counsel for Appellant.

Supreme Court U. S.
FILED.
OCT 16 1893
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

No. 181.

GEORGE I. SENEY, Trustee,
Appellant.

vs.

THE WABASH WESTERN RAILWAY COMPANY.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

STATEMENT AND BRIEF FOR APPELLEE.

WELLS H. BLODGETT,
Attorney.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892. 1893

No. 181. 26

GEORGE I. SENEY, Trustee,
Appellant.

vs.

THE WABASH WESTERN RAILWAY COMPANY.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

STATEMENT.

This was a proceeding by intervention against Solon Humphreys and Thomas E. Tutt, receivers of the property of the Wabash, St. Louis & Pacific Railway Company. It was instituted by Geo. I. Seney, trustee, in a mortgage covering what was known as the "Clarinda Branch" of the Wabash railroad, to recover a rental equal to the interest at six per cent on 264 bonds for $1000 each, from August 1, 1884, to April 16, 1886, which bonds were secured by the mortgage in which the appellant (Seney) was trustee. The material facts necessary to a correct understanding of the issues in the case, are as follows:

On the 15th day of July, 1879, the St. Louis, Kansas City & Northern Railway Company was *the owner* of a line of railroad extending in a northerly direction from a point known as Roseberry, on the east side of the Nodaway River in Nodaway County, Missouri, to the Iowa State line, and it was at the same time *lessee* for a term of ninety-one years of a line extending from the Town of Clarinda in Page County, Iowa, in a southerly direction, to a point on the southern boundary line of Iowa, where the two roads were connected, and together they formed a line extending from Roseberry, Missouri, to Clarinda, Iowa, and are known in this litigation, as the "Clarinda Branch" of the Wabash system. Such being the situation, the St. Louis, Kansas City & Northern Railway Company (the Wabash) in July, 1879, for the purpose of raising the funds necessary to complete and equip that branch, issued and sold two hundred and sixty-four bonds for the sum of one thousand dollars each, bearing interest at the rate of six per cent per annum, payable semi-annually on the first days of February and August in each year; and to secure the payment of the principal and interest of said bonds the St. Louis, Kansas City & Northern Railway Company (the Wabash) mortgaged and conveyed its estate in the whole of said branch (being an estate in fee in that portion of the line situated in Missouri, and its leasehold estate in that part located in Iowa) to George I. Seney, trustee.

The mortgage or deed of trust to Seney did not purport to convey to him any of the income or earnings of the road, but provided that if default should occur in the payment of interest on said bonds and such default

should continue for sixty days after payment had been demanded, the trustee should, whenever requested so to do by the holders of fifty or more of said bonds, take possession of all said mortgaged property and operate the same, and collect and receive the tolls and incomes thereof. It was further provided in said mortgage, that upon demand in writing by the holders of fifty or more of said bonds the trustee should, after twenty days public notice, sell said property at public auction to the highest bidder for cash.

Consolidation of Wabash with St. Louis, K. C. and N. Ry. Company.

In November, 1879, the St. Louis, Kansas City & Northern Railway Company of Missouri was consolidated with the Wabash Railway Company of Illinois, Indiana and Ohio, and the corporation thus formed took the name of the "Wabash, St. Louis & Pacific Railway Company.'

Wabash General Mortgage.

Afterwards, on the first day of June, 1880, the Wabash St. Louis & Pacific Railway Company, to secure a proposed issue of bonds, amounting to fifty million dollars (seventeen million dollars of which were actually issued), executed what is designated in this record (printed record, p. 172) as its "General Mortgage," whereby it conveyed all the lines of railroad then owned or leased to it, including the "Clarinda Branch," to the Central Trust Company of New York and James Cheney, as trustee.

Receivers Appointed.

Afterwards, in May, 1884, the Wabash, St. Louis & Pacific Railway Company became insolvent and filed in

the Circuit Court of the United States for the Eastern District of Missouri, a bill of complaint (printed record, p. 54), wherein it alleged its insolvency and prayed the Court to appoint receivers to take possession of, preserve and operate all its lines of railroads for the benefit of all its creditors, according to their respective legal and equitable rights. To that bill the Central Trust Company of New York and James Cheney, trustees in the Wabash "General Mortgage," George I. Seney, trustee in said "Clarinda Branch" mortgage, as well as the trustees in all the other underlying and divisional mortgages on the various lines of said Wabash system, were made defendants.

Upon presentation of the foregoing bill to the Court, an order was made (printed record, p. 67), appointing Solon Humphreys and Thomas E. Tutt, receivers of all the railroads and property of said Wabash Company.

The order appointing the receivers directed them to take possession of, operate and preserve all said lines of railroad, and from their earnings pay all their operating expenses; all balances due to other railroad or transportation companies, growing out of an interchange of traffic during the preceding six months; all just claims for labor, supplies, professional services, salaries of officers and employes that had been earned or that had matured during the preceding six months; all rentals that had accrued, or might thereafter accrue upon leased lines, or for the use of terminal or track facilities, and all rentals due or to become due upon rolling stock theretofore purchased by the Wabash Company and partially paid for.

The receivers were also required by the order appointing them, to keep such accounts as might be necessary to show the sources from which all incomes and revenues were derived, with reference to the interests of all parties to the suit and the expenditures made by them.

Petition of Receivers for Instructions.

On the 26th day of June, 1884 (within one month after their appointment), the receivers made a report to the court (printed record, p. 70), in which they stated that to the best of their information and belief the earnings of the lines that were brought together in 1879, by the consolidation of the St. Louis, Kansas City & Northern Railway Company with the Wabash Railway Company—including the Clarinda Branch—were and always had been sufficient to pay their operating expenses, the cost of their maintenance and interest on the several series of bonds that were secured upon them by mortgages and deeds of trust, and they prayed the Court to instruct them as to what they should do with respect to the payment of interest, as the same from time to time fell due, on the bonds secured by mortgage on the several lines and divisions of said road as they existed at and before the date of said consolidation.

Order of June 28th, 1884.

Afterwards, on the 28th day of June, 1884 (two days after the filing of the above-mentioned petition for instructions), the Court made an order (printed record, p. 79), the material portions of which were as follows:

"It is ordered (printed record, p. 80) that until otherwise directed, the receivers herein, from the incoming rents and profits of said property, *after meeting such*

other obligations as they have been directed to discharge by the former orders of this Court, pay, from *whatever balance* may remain in their hands, the interest as the same shall from time to time mature upon the following bonds, or other obligations secured by mortgage on the several lines or divisions of the 'Wabash Railway Company' and of the 'St. Louis, Kansas City & Northern Railway Company' before the date of their consolidation, under the name of the 'Wabash, St. Louis & Pacific Railway Company,' to wit: * * * *

On the first days of February and August, or as soon thereafter as practicable, the semi-annual interest at 6 per cent per annum then due on the two hundred and sixty-four bonds for one thousand dollars each, issued in July, 1879, and secured by mortgage on the Clarinda & St. Louis Railroad (otherwise known as the 'Clarinda Branch'), amounting to $7920. * * * * * *"

The foregoing order also directed the receivers to keep the accounts of the earnings and expenses of certain other lines separately, and instructed them to make quarterly reports showing not only the incomes and expenses of said lines, but also the methods by which such incomes and expenses were ascertained.

Order in Havana Division Case.

In October, 1884, the receivers asked the Court (printed record, p. 84) for instructions with respect to the payment of interest or rental on a certain other branch line of the Wabash system, known as the "Havana Division," and in passing upon the matter then presented, the Court, among other things (printed record, p. 88), said:

"The Court: I stated at an early day (and Judge Brewer has gone over the matter and we are in accord with regard to it) that I am not going to take the money that belongs to the underlying mortgages to pay interest on non-earning branches. If they have got to fail, they must fail. I will protect the underlying mortgages especially, and they haven't got enough here to do it * *

If this branch is earning enough to pay its own interest, that is another inquiry; but certainly I am not going to sit here and order that the earnings that belong to other branches in this consolidated system shall be taken to pay concerns that do not earn running expenses. Let them collapse."

Report and Petition of Receivers for Instructions, Filed March 22nd, 1885.

Under the clause in the order of their appointment which directed the receivers "to keep such accounts as might be necessary to show the sources from which all incomes and revenues were derived, with reference to the interests of all parties to the suit and the expenditures made by them," the receivers kept the accounts of the earnings and expenses of the "Clarinda Branch" separately, and on the 20th day of March, 1885, they made another application to the Court, in which they set forth in detail the earnings and expenses of the various lines of the system up to November 30, 1884, and prayed the Court for instruction with respect to the future operation by them of the several branch lines that had failed to earn their operating expenses. The material portions of the application (printed record, pp. 92 and 93) are as follows:

"Now comes Solon Humpreys and Thomas E. Tutt, receivers of the Wabash, St. Louis & Pacific Railway Company, and respectfully state and show unto your Honors that since they took possession of the system of railroads previously operated by the Wabash, St. Louis & Pacific Railway Company, the earnings of many of the branch and leased lines thereof have not been sufficient to pay the operating expenses, interest on their mortgage bonds and the rentals contracted to be paid by the said Wabash, St. Louis & Pacific Railway Company

under the several contracts and leases under which said lines were acquired.

Your receivers further state that the operating expenses of a number of said roads have, since the receivership, greatly exceeded their earnings, and they herewith submit unto your Honors a statement showing in detail the earnings and operating expenses of all the branch and leased lines of said system from May 29th to November 30th, 1884. * * *

* * * * * * *

Fifth. Your receivers further state that the several branch and leased lines of said system were to the best of their knowledge and belief acquired at the dates in the manner and on the terms following, to wit:

(Here follows a statement in detail of the dates and terms on which the various branch lines were acquired by the Wabash Company, and as to the Clarinda & St. Louis line it contains the following:)

Clarinda and St. Louis Railroad.

On the 11th day of July, 1879, the Clarinda and St. Louis Railroad Company (of Missouri) conveyed to the St. Louis, Kansas City & Northern Railway Company its line of railroad extending from Roseberry, Missouri, to the Iowa State line, a distance of ten miles, and on the 15th day of July, 1879, the Clarinda & St. Louis Railroad Company (of Iowa) leased to the St. Louis, Kansas City & Northern Railway Company for a term of ninety-one years its line of railroad extending from the Iowa State line to Clarinda, Iowa, a distance of eleven and one-half miles. To construct and equip the foregoing lines (which together formed a continuous line from Roseberry, Missouri, to Clarinda, Iowa, a distance of twenty-one and one-half miles) the St. Louis, Kansas City and Northern Railway Company issued its bonds in the sum of $264,000.00, and to secure the payment of the principal and interest thereof said company executed a mortgage covering all the lines aforesaid. Said bonds bear interest at the rate of six per cent per annum, payable on the first days of February and August.

For the period commencing May 29th and ending November 30th, 1884, the earnings and expenses of said line have, under the receivership, been as follows:

Gross earnings		$2,790.79
Operating expenses	$6,667.58	
Other debits (including six months' taxes	737.47	
Proportion of car-trust interest.	10.43	
Interest (six months)	7,920.00	
		15,335.48
Deficit		$12,544.69

The expenses of this line, not including interest, have exceeded its earnings $4,624.69. * * *

Your receivers, therefore, pray your Honors to make such orders with respect to the future operation of said lines and concerning the payment of the respective rentals agreed to be paid by said Wabash, St. Louis & Pacific Railway Company, in the said leases and agreements aforesaid, as to your Honors shall seem meet."

Order of April 16th, 1885.

On the 16th day of April, 1885, after all parties to the suit had been duly notified of the application last above mentioned, the Court entered an order (printed record p. 96) with respect to the several matters brought to its attention. In that order the Court instructed the receivers, and informed the several parties to the suit, as follows:

"Where a subdivision earns no surplus, simply pays operating expenses, no rent or subdivisional interest will be paid. If the lessor or the subdivisional mortgagee desires possession or foreclosure he may proceed at once to assert his rights. While the Court will continue to operate such subdivision until some application be made, yet the right of a lessor or mortgagee whose rent or interest is unpaid to insist upon possession or foreclosure will be promptly recognized.

That, it is true, may work a disruption of the system, as evidenced by the movement just made in respect to this Cairo Division, but the proceeding for disruption will come from the subdivisions. The Court is not sloughing off branches, tearing the system in two, but the disruption, if it comes, will come from those who seek separation and have legal right to so do."

Clarinda Branch Surrendered.

Afterwards, on the 22d day of March, 1886, appellant, as trustee in the "Clarinda Branch" mortgage, presented to the Court a petition (printed record, p. 167), in which he recited the defaults that had occurred in the payment of interest on the bonds secured by that mortgage, and prayed the Court to instruct the receivers (Humphreys and Tutt) to surrender said "Clarinda Branch" to a separate receiver, to be appointed by another Court in a suit brought by him to foreclose his mortgage. On the 16th day of April, 1886, the Court (printed record, p. 155) entered an order on the petition last above mentioned, in which it directed Humphreys and Tutt to surrender the entire railroad therein described as the "Clarinda Branch," together with all the property, real and personal, thereunto belonging, to Thomas McKissock, who had been previously designated as receiver of said property in the separate suit brought by appellant to foreclose his mortgage thereon, and in obedience to that order Humphreys and Tutt surrendered the property as directed.

Facts Stipulated.

It was among the things stipulated at the hearing before the Master (printed record, pages 32 and 33) as follows:

1st. It was stipulated that Seney, the trustee in the "Clarinda Branch mortgage," never demanded possession of the mortgaged road until on or about March 20th, 1886, when he filed his petition in the Wabash case, reciting the defaults that had occurred in the payment of interest on the bonds secured by his mortgage, and praying that the mortgaged road be surrendered to him.

2d. It was stipulated as a fact before the Master (printed record, p. 33), that while the Clarinda Branch was in possession of and being operated by Humphreys and Tutt as receivers, *they expended in necessary maintenance, operation and taxes a large sum in excess of the gross incomes and earnings arising therefrom.*

3d. It was stipulated as a fact in this case (printed record, p. 171) that the labor, supply and other preferential claims which the receivers were directed to pay by the order of their appointment amounted to $4,417,491.00.

4th. It was stipulated as a fact in the case (printed record, pages 171 and 172) that the total earnings of all the Wabash lines operated by Humphreys and Tutt, as receivers, from the date of their appointment to March 6, 1886, were $25,615,478.87, and that the operating expenses of all said lines for the same period were $24,151,249.55, which left in the hands of the receivers (without paying any interest) only the sum of $1,464,229.32, with which to discharge the labor and supply claims and other preferential indebtedness of the Wabash Company, which amounted to $4,417,491.00, and all of which the receivers were directed to pay by the order of their appointment.

Master's Report.

The Master, in his report (printed record, p. 25) recited the facts as stipulated by the parties; referred to the fact that the line had been operated by the receivers at a loss; recited the substance of the order of June 28, 1884, which directed the receivers to pay the interest on the Clarinda Branch bonds *after meeting such other obligations as they had been directed to pay by the former orders of the Court;* found that the petitioner had not brought himself within the terms of that order, and thereupon he recommended that the petition be dismissed.

Exceptions to Report.

To the foregoing report of the Master the intervenor excepted (printed record, p. 33) for the following reasons:

1st. Because the Master had failed to find that the receivers were liable to intervenor for the rental accruing under the lease.

2d. Because the Master misconstrued the order of June 28, 1884.

3rd. Because the Master found that intervenor was bound by the order of June 28, 1884.

4th. Because his conclusions of law were erroneous, and

5th. Because the fact that the line had been operated at a loss was no sufficient reason for denying his claim.

First Opinion of the Court.

The exceptions to the Master's report in this case were first heard by the Court in connection with two other cases of similar character, and after deciding all other

questions against the petitioner the conclusion was then reached by the Court, that the order of June 28, 1884, authorized the receivers to pay interest on the Clarinda Branch bonds and that the petitioner was justified in relying on that order. That part of the opinion to which we refer was (printed record, p. 41) as follows:

"With respect to the claim of George I. Seney, the trustee in the mortgage upon the Clarinda Branch, a somewhat different state of facts existed.

On June 28, 1884, upon the petition of the receivers and the representations by them that the Clarinda Branch was important to the system, and had earned more than operating expenses, the Master recommended an order, which was duly entered by the Court, as follows:

'It is ordered that until otherwise directed the receivers herein, from the incoming rents and profits of said property, after meeting such other obligations as they have been directed to discharge by the former orders of this Court, pay, as the same shall from time to time mature, from whatever balance may remain in their hands, * * * * on the first days of February and August (or as soon thereafter as practicable), the semi-annual interest at 6 per cent per annum, then due on two hundred and sixty-four (264) bonds of one thousand dollars each, issued in July, 1879, and secured by mortgage on the Clarinda and St. Louis Railroad (otherwise known as the Clarinda Branch), amounting to $7920.'

The intervener, though made a party defendant, entered his appearance and first became a party to the proceeding on January 4, 1885. He was notified by the receivers of an application for a new order in respect to the Clarinda Branch, which was entered upon April 16th. The rental was, in fact, paid to August 1, 1884. Now the rental from August 1, 1884, to April 16, 1885, stands, we think, upon a different footing. There was an express order of the Court in reference to that branch and couched in such language that the intervener had a right to rely upon it and expect the payment of his rent until some other order was made. Wherever a specific order is entered after showing and petition by the receivers it would seem as though the party stood

upon a different footing and was not called upon to assert his rights as lessor to the surrender of the leased property. Whatever might have been the reasons, and however much mistaken the receivers may have been, they acted upon their best judgment, and the Court seems by that order to have given express assurance to the intervener that the interest of the system required the payment of that rental and the preservation of that property in the system. So that the order will be that the exceptions to the report of Master will be partially sustained and the receivers directed to pay the rental for the time specified, with interest. So far as the subsequent rental is concerned, there is nothing to distinguish this case from the other two heretofore considered, and the report of the Master will be sustained. It is unnecessary to add more. We have had these matters under consideration for some months and have given to them the most careful consideration. The arguments and briefs of counsel have been most full and elaborate and the questions presented not easy of solution. The amounts in each case are so large that if our conclusion is erroneous a review may be had by the Supreme Court."

Motion for Rehearing.

Under the foregoing opinion a decree was entered (printed record, p. 46) in favor of appellant (Seney) for the sum of $13, 234.32, and thereupon the receivers filed (printed record, p. 46) a motion for a rehearing, which was by the Court sustained.

Second Opinion of the Court.

Afterwards on the 18th day of March, 1889, the court having fully considered the matter, delivered a second opinion, in which it fully sustained the report of the Master and dismissed the petition. That opinion we print in full in our brief.

Final Decree.

A final decree was then entered overruling the exceptions of the intervener, confirming the Masters' report and dismissing the petition. From that decree an appeal was taken to this Court.

POINTS.

1. The decree of the Circuit Court ought to be affirmed, because the order of June 28, 1884, was properly construed by the Circuit Court in its last opinion.

2. The decree ought to be affirmed, because Seney, as trustee in the mortgage, could not have maintained an action for rent against the Wabash Company, nor can he maintain such action against the receivers, because there was neither privity of contract, nor privity of estate, between him and the company, or between him and the receivers.

3. The decree ought to be affirmed, because the only way in which Seney, as trustee in the mortgage, could entitle himself to the rents and profits of the mortgaged property, was by taking possession under his mortgage, or by filing a bill to foreclose and demanding a receivership.

4. The decree ought to be affirmed because appellant was informed by the nature of the proceeding, the general course of administration, and the orders made in the case, that his interest would not be paid, except from the earnings of his own line, and not even then until after the labor and supply debts of the company had been discharged.

5. The decree ought to be affirmed, because Seney has no equitable claims on the funds of the receivership.

BRIEF.

I.

The decree of the Circuit Court ought to affirmed, because the order of June 28, 1884, was properly construed by the Circuit Court in its last opinion.

If we were to eliminate from this record the order of June 28, 1884 (ante page 5), we could then safely say that every point now contended for by appellant has been already determined against him in this court.

The record shows that this case was first heard in the Circuit Court in connection with two others, and that it was solely on account of the order of June 28, 1884, that it was then distinguished from the other two. The decrees of the Circuit Court in both the other cases have been already affirmed here. *Quincy, etc., Railroad Co.* vs. *Humphreys*, 145 U. S., 82; *St. Joseph & St. Louis Railroad Co.* vs. *Humphreys*, 145 U. S., 105.

There are two propositions now presented in connection with the order of June 28, 1884:

First. It is contended by appellee that the order appointing the receivers and requiring them to pay the operating expenses of all the lines of the system and the labor and supply debts of the Wabash Company from the earnings of the lines, stood throughout the receivership as the law of the case; and

Second. It is contended that the order of June 28th only authorized the receivers to pay interest and rentals *from whatever balance* might remain in their hands, after

they had paid the operating expenses of the system and the labor and supply debts of the Wabash Company.

(a). In considering the foregoing propositions it must be remembered that after paying the operating expenses of the lines and the labor and supply debts of the Wabash Company, there was never any balance in the hands of the receivers out of which they could pay either interest or rentals.

With respect to that matter it is stipulated as a fact in this case (printed record, p. 171), that the preferential indebtedness of the Wabash Company, which the receivers were by the order of their appointment directed to pay, amounted to $4,417,491, and that the total gross earnings of all the lines of the system—from the day on which the receivers were appointed, up to the day on which the Clarinda Branch was surrendered to Seney, as trustee—lacked over two million dollars of being sufficient to pay their operating expenses and the labor and supply debts of the Wabash Company.

It being conceded, then, as a fact in the case, that the earnings of all the lines of the system were never, while operated by the receivers, sufficient to pay their operating expenses and the labor and supply debts of the company, our next inquiry ought to be, *as to whether the order directing those payments was binding on Seney, the appellant.*

On that point we contend, that as neither Seney nor any other party to the suit ever excepted to the order directing the receivers to pay the labor and supply claims and other preferential indebtedness of the Wabash Company, that the order requiring those pay-

ments to be made, stood to the end of the litigation as the law of the case.

Our contention is, that if Mr. Seney considered the order to pay the labor and supply debts of the Wabash Company prejudicial to his interests, or prejudicial to the interests of his trust, it was his duty to interpose an objection immediately on coming into the case, and that not having done so, he is now bound by the order as it was made. The authorities on that point seem clear.

In *Calhoun* vs. *St. Louis & S. E. Ry. Co.* (14 Fed. Reporter 9), a bill was filed by trustees to foreclose a consolidated mortgage, and receivers were appointed at their instance. There were a number of senior divisional mortgagees, and there was also a large indebtedness contracted by the consolidated company for labor and supplies. There were net earnings of the system, and the question before the Court was as to whether such earnings should be used to pay the labor and supply claims, or be paid to the holders of the senior divisional bonds. In passing upon the question, the Court said:

"There was an order entered by the Court when the bill was filed for the foreclosure of the consolidated mortgage, directing the receiver, out of the net earnings of the road, to pay all certificates of indebtedness and other balances which might be due to the employes of the road, and what might be due for supplies and materials furnished since the first of January, 1874. It is claimed that this order was entered by the consent of the parties then appearing in the case, and that the parties to the prior mortgages are not bound by this order; but it seems to me, that being an order made at the time the Court took jurisdiction of the case, the parties then in court were clearly bound by it, and that all parties who came into the litigation afterwards must be considered

as coming subject to the policy which had been prescribed by the Court in relation to the payment of the labor and supply claims, and if that be not so, then certainly subject to the order as modified by the Court at the instance of the first mortgagees. Then it would follow under the rule of the Supreme Court in the case of *Fosdick vs. Schall*, 99 U. S. 125, the Court having a discretion in relation to the appointment of a receiver, and the right to prescribe on what terms the appointment should be made, that the conditions then imposed upon the property should adhere to it during the progress of the litigation, and therefore all claims coming within the terms of the order of the Court should be paid in the manner there pointed out."

A similar question was presented in *Wallace* vs. *Loomis* (97 U. S. 146). That was a case in which the Court had made an order directing the receivers to issue certificates to put the road in repair, and had declared the certificates a first lien on the property of the company. After the certificates had been issued and the money expended, Wallace, a bondholder, objected. In disposing of his objection, the Court said:

"In the present case, it appears that the parties most materially interested, either expressly consented to the order or offered no objection to it. The appellant complains that it was made without due notice to the second mortgage bondholders. But this can not properly be alleged, inasmuch as the trustees of the second mortgage were parties to the suit and had due notice of the application and made no objection to its being granted. The bondholders were represented by their trustees and must be regarded as bound by their acts, at least so far as concerns the power of the Court to act in making the order, and so far as the interest of third persons acting upon the faith of it might be affected."

In *Miltenberger* vs. *Ry. Co.* (106 U. S. 286), the Court appointed a receiver over certain railroad property, and directed him, among other things, to build a bridge and

piece of road and also purchase some rolling-stock. After the receiver had executed the orders, certain mortgage creditors objected and claimed that the expenditures had been made without authority. The Court, in disposing of the question (page 308), said:

"It did not comport with the principles of equity for the appellants to lie by and see the Court and the receiver dealing with the property in the manner now complained of, and content themselves *with merely protesting generally*, and disclaiming all interest under the receivership, and yet assert, as they did in the cross-bill, that the piece of road from Clymer's Station to Logansport, and the bridge and the land, and the rolling-stock and the other property acquired by the receiver, and now alleged to have been acquired by him without authority, were subject to the lien of the first mortgage, and now claim the proceeds of all that property, without paying the debts incurred for acquiring it. A court of equity, however it might act on the question of original authority or discretion, if presented in season and under circumstances of good faith, will not visit upon innocent parties dealing with a receiver within the authority of its orders, consequences which result from the inequitable negligence and supineness of a party to the suit or of those represented by him."

In *Post* vs. *Dorr* (4th Edwards' Chancery, 426), the assignee of a mortgage claimed certain rents that had accumulated in the hands of a receiver. The receiver had been appointed at the instance of a mortgagee, directed to disburse the rents in a certain manner, and neither the mortgagor nor his assignee who made the claim had objected to the order. In denying his claim the Court said:

"It is too late to raise an objection against the granting of the injunction and an appointment of a receiver of the rents. If any well-founded objection existed to either, it should have been made on motion to dissolve

the injunction or in opposition to the receivership at the time it was applied for. Submitting to the appointment of a receiver by those who were before the court and had a right to object, and who could have appealed from the order, if dissatisfied with it, but did not, is such acquiescence in the order *as renders it the law of the case* with respect to the right to have a receiver; and that right being established the application of the funds must follow so as to accomplish the object intended."

In *Meyer* vs. *Johnson* (53 Alabama, 350), it is stated as a general rule, that whenever, in the course of a receivership, the Court makes an order which the parties to the suit consider injurious to their interests, it is their duty to file a motion at once asking the Court to cancel or modify it.

We, therefore, upon the foregoing authorities, conclude that whether the order directing the receivers to pay the labor and supply debts of the Wabash Company *was proper or improper*, appellant and all other parties to the suit are now bound by it.

(b). *The order of June 28, 1884, only authorized the receivers to pay interest and rentals from whatever balance might remain in their hands after they had paid the operating expenses of the system and the labor and supply debts of the Wabash Company.*

If it be conceded that the order directing the receivers to pay the labor and supply debts was binding on all parties to the suit, and if it be further conceded that the net earnings of the property were never sufficient to pay that indebtedness, then the only remaining inquiry is, as to what the intervener had a right to expect under the order of June 28th.

In its first opinion (ante page 13), the Court said, that under the order of June 28th intervener had a right to expect payment of rental, or the interest as it from time to time fell due, on the Clarinda Branch bonds, and taking that view of the order at that time the Court said:

"There was an express order of the Court in reference to that branch couched in such language that the intervener had a right to rely upon it and expect the payment of his rent until some other order was made. Wherever a specific order is entered, after showing and petition by the receivers, it would seem as though the party stood upon a different footing and was not called upon to assert his rights as lessor to the surrender of the leased property."

But when the Court in that opinion construed the order of June 28th as requiring the receivers to pay interest and rentals, without reference to whether they had first paid the operating expenses of all the roads in their charge, and the labor and supply debts of the Wabash Company, it misapprehended the scope of that order. The order of June 28th did not in broad terms direct the payment of interest and rentals from earnings. It only directed the receivers to pay interest and rentals "*from whatever balance might remain in their hands after meeting such other obligations as they had been directed to discharge by the former orders of the Court.*" Therefore, it was not until after the operating expenses of the system, and all the labor and supply debts of the company had been paid, that intervener was authorized to expect either interest or rental.

In its second opinion, the Court corrected its error, and should we continue the discussion indefinitely we could not hope to present the matter so clearly as was done by the Circuit Court in its last opinion.

Brewer, C. J., then said:

"The opinion filed when this case was originally decided will be found in the 34th Fed. Rep., 259. At that time there were three intervening petitions before us. After discussing the general questions involved and coming to a conclusion adverse to the interveners, we said that this intervener occupied a different position and had equities based on the order of June 28, 1884, which entitled him to recover.

The petition for rehearing on the part of the receivers and the purchasing committee challenges this conclusion, and is insisted that the construction we placed on the order of June 28 is not only erroneous, but in conflict with prior rulings in this same foreclosure, and particularly with the decision in the intervening petition of Bonner, et al., reported in 30 Fed. Rep., 332. In our original opinion we said, referring to the order of June 28: 'There was an express order of the Court in reference to that branch and couched in such language that the intervener had a right to rely upon it and expect the payment of his rent until some other order was made.

Wherever a specific order is entered, after showing and petition by the receivers, it would seem as though the party stood upon a different footing and was not called upon to assert his rights as lessor to the surrender of the leased property.' It will be seen from this quotation, as well as from the balance of the opinion, that the sole ground of difference between the case of this intervener and the others grew out of this order of June 28. That order or as much as is material, reads as follows:

'It is ordered that until otherwise directed the receivers herein, from the incoming rents and profits of said property after meeting such other obligations as they have been directed to discharge by the former orders of this Court, pay, as the same shall from time to time mature, from whatever balance may remain in their hands, on the first days of February and August (or as soon thereafter as practicable), the semi-annual interest at six per cent per annum, then due on two hundred and sixty-four (264) bonds, of one thousand dollars each, issued in July, 1879, and secured by mortgage on the Clarinda

and St. Louis Railroad (otherwise known as the Clarinda Branch), amounting to $7,920.'

It will be observed that the receivers are directed to pay this interest 'after meeting such other obligations as they have been directed to discharge by the former orders of this Court.' Now, only one month before and in the order appointing the receivers they have been required to pay, first, the expenses of operating and maintaining the property in their charge, and, second, the debts of the Wabash Company incurred for labor and supplies during the six months preceding the receivership so that at the time the order to pay interest was entered there was a former and existing order to pay what is commonly known as preferential debts. It cannot be that this order was intended to substitute or set aside former orders, indeed it is expressly made subject to them, but it is a part of the history of this foreclosure that there were at the commencement of the receivership over three million of these preferential debts, and at the time when the sale was made under the foreclosure there still remained over two million unpaid. The receivers were never able to pay these preferential debts; and as this order of June 28th to pay interest is expressly subordinated to the former order as to preferential debts, it follows they were never called upon to pay this interest and the intervener never had a perfected claim therefor. Not only is this order of June 28th subordinated to former orders; it expressly directs the source from which payment is to be made. It is 'from the incoming rents and profits of said property,' and again 'from whatever balance may remain in their hands.' It was not to be paid out of the *corpus* of the property or from its sale, but simply from the rents and profits, and that this is the proper construction of the order was affirmed in the case of Bonner, in which, speaking for the court, I said:

'At another time we ordered payment of rent out of the earnings of a leased line, and, in the course of my opinion which I then delivered, I said that those surplus earnings belonged to those different lines, and they should be used in payment of their obligations; but if you will read the orders of the Court that were entered, and the opinions that were announced, you will find no attempt

to set aside the orders made by the Court, at the inception of the receivership, that the preferential debts should be first paid. Those orders stood like warrants drawn upon a treasurer to be paid out of funds not hereinbefore appropriated.'

I am satisfied from these conclusions that in the former decision we did not give sufficient consideration to all the clauses of this order of June 28th, and by reason thereof we were led to make an order in favor of the intervener to which he was not entitled and which was entirely out of harmony with the other administration of this foreclosure. Therefore, our attention having been called to it by this petition for a rehearing, we change the order heretofore entered to another one in favor of the respondents and against the intervener. I am also inclined to think that possibly one or two other reasons given by the respondents are sufficient to compel the ruling we now make, but I do not care to enter into any discussion of them; as I said in the former opinion, the amount involved is so large that if we have made a mistake it can be corrected in the Supreme Court.

The report of the Master will be confirmed and judgment entered against the interver for costs.

Thayer, J., concurring."

Upon the reasoning and conclusions contained in the foregoing opinion, we submit that there is nothing in the order of June 28th which ought to distinguish this case from the cases of *Quincy, etc., Railroad Co.* vs. *Humphreys* and *St. Joseph and St. Railroad Co.* vs. *Humphreys* 145 U. S.

II.

The decree ought to be affirmed, because Seney, as trustee in the mortgage could not have maintained an action for rent against the Wabash Company, nor can he maintain such action against the receivers, because there was neither privity of contract nor privity of estate between him and the company, or between him and the receivers.

(a). This proceeding has been treated from the beginning as an action by Seney, as trustee in a mortgage, to recover from the Wabash receivers *a rental* for the use of the Clarinda Branch. The record shows that about one-half of the Clarinda Branch is in Missouri and the other half in Iowa, and before Seney can maintain an action to recover a rental from the Wabash Company, or from the Wabash receivers, he must show that there was either privity of contract or privity of estate between himself and the defendants in the action.

Of couse there was no *privity of contract* between Seney and the Wabash Company, or between him and the receivers. No one ever agreed to pay him a rental, and therefore, it will not be contended that he can recover on any contract to which he was a party. If there was no privity of contract, then he can only recover by showing that there was privity of estate, and on that proposition our contentions are: 1st, That if there had been no receivership, Seney could not have maintained an action for the recovery of rental from the Wabash Company, because he was not an assignee of the reversion; and, 2nd, That he can not maintain an action against the receivers for the recovery of a rental, because the receivers were not assignees of the term.

Considering those propositions in their order, our first inquiry is: Could Seney have maintained an action for the recovery of a rental from the Wabash Company if there had been no receivership?

The transactions between the parties were as follows: In 1879 the Wabash Company *owned* that part of the Clarinda Branch in Missouri, and

at the same time the Clarinda & St. Louis Railroad Company *owned* that part situated in Iowa. The Clarinda & St. Louis Railroad Company thereupon made a lease of that part of the branch in Iowa to the Wabash Company for a term of ninety-one years. After that was done the Clarinda & St. Louis Railroad Company held the reversion and was the landlord, while the Wabash Company held the term and was a tenant. The Wabash Company then issued the two hundred and sixty-four bonds in question, and to secure their payment it mortgaged to Seney a fee simple estate in that part of the branch in Missouri, *and its leasehold estate* of ninety-one years in that part of the branch *in Iowa*.

As to that part of the Clarinda Branch in Missouri, which was *owned by the Wabash Company*, no contract of lease was ever executed by or to any one, and, therefore, we may dismiss the discussion as to that portion of the property.

As to that part of the branch in Iowa, the material inquiry is: By what process could Seney make himself the landlord and put himself in position to demand rent from the Wabash Company for the use of that part of the line? The Wabash Company had mortgaged to him its term of ninety-one years, and if he had foreclosed his mortgage on the term and had purchased that estate, he would then have been *an assignee of the term*; or, in other words, he would have become a tenant of the Clarinda & St. Louis Company under the lease, and as such he would have been liable (by reason of the privity of estate thus created) to *pay rent*, instead of being in a position to demand it. So it is clear that he could not,

by foreclosure or any other proceeding under his mortgage from the Wabash Company, have become the landlord, because the Wabash Company was itself a tenant, and by taking its estate he would have stood in its shoes and been himself a tenant, and as tenant he would have been liable on the covenant to pay rent as well as on all the other covenants that run with the property.

(b.) *Seney had a mortgage on the reversion but he did not foreclose it.*

The record shows, that on the same day in 1879, that the other papers were executed, the Clarinda & St. Louis Railroad Company (the lessor), in order to give additional security to such portion of the two hundred and sixty-four bonds in question as were equal to twelve thousand dollars per mile on that portion of the branch in Iowa, mortgaged to Seney *its estate in reversion*, and if it were shown by this record that before this rental accrued, Seney had foreclosed *his mortgage on the reversion* and purchased that estate at foreclosure sale and received his deed for it, he would then have been *an assignee of the reversion*, and as such he would have stood in the shoes of the Clarinda & St. Louis Company (the lessor), and by reason of the *privity of legal estate* thus created, he could have maintained his action against the Wabash Company for the recovery of rent, because the right to demand rental would then have been vested in him as assignee of the reversion. But under the statutes and rules of decision in Iowa, where this property is situated, the mortgagor of the reversion (the Clarinda Company), remained the owner of that estate and was

entitled to the rents and profits until foreclosure and sale and the time for redemption had passed. *Myton* vs. *Davenport*, 51 Iowa, 583, *Barrett* vs. *Blackmar*, 45 Iowa, 565.

But it is unnecessary to pursue the inquiry, as to what would have been the effect of a foreclosure by Seney of his *mortgage on the reversion*, because there is nothing in the record to show and it is not even contended, that his mortgage on the reversion was foreclosed and purchased by him, and until that had been done, and a deed executed, the Clarinda & St Louis Railway Company remained the owner of the reversion, and both privity of contract and privity of estate continued to exist between the Clarinda Company as lessor, and the Wabash Company as its tenant; and while that relation existed the Clarinda Company was entitled to the rents and was the only party (without it may have been the bondholders) that could have sued on the covenants in the lease. Therefore, as there was never any privity of contract between Seney and the Wabash Company, and as he is not shown to have been an assignee of the reversion, there was no ground on which he could have maintained an action against the Wabash Company if there had been no receivership.

(c.) *Seney could not have maintained an action against the receivers for the recovery of a rental, because they did not take as assignees of the term.*

Of course there was *no privity of contract* between Seney and the Wabash receivers; that is not even claimed. Seney was not an assignee of the reversion, because as we have already shown, he did not fore-

close his mortgage on that estate, and even if he had foreclosed his mortgage on the reversion and had purchased that estate at foreclosure sale, there would then then have existed no privity of estate between him and the receivers, *because the receivers did not take as assignees of the term.* The latter proposition was expressly determined in *Quincy &c. Railroads* vs. *Humphreys*, 145 U. S. 82.

(d.) *Seney could not sue on the covenant of the Wabash Company to pay interest on the two hundred and sixty-four bonds because he was neither a party to that contract nor was the covenant made for his benefit.*

There was a covenant in the lease made by the Clarinda & St. Louis Railroad Company to the Wabash Company in 1879, to the effect that the Wabash Company would from the earnings of the leased road, or from its own funds, pay, as a rental for the leased line, the interest as it from time to time fell due on the bonds in question. But that covenant *was for the benefit of the bondholders*, and not for the benefit of Seney. It was a personal covenant on which only a *personal judgment* could have been recovered. It did not concern the trust property. We know there are cases following Lawrence vs. Fox (20th N. Y. 268), in which it has been held, that when, for a sufficient consideration, A makes a promise to B for the benefit of C, C may maintain an action against A on the promise, because *it was made for his benefit.* But that doctrine can not be applied here, because Seney was not a creditor of the Wabash Company; he held no bonds, and the personal promise of

the Wabash Company to pay interest was in no way beneficial to him. That promise was for the benefit of the several bondholders, and under the rule to which we have referred, any individual bondholder could have maintained an action against the Wabash Company on that promise for the interest on his bonds. That is precisely what was held in *Opedike* vs. *Pacific Railroad Co.*, 3rd Dillon, 55, and in *Singer* vs. *St. Louis, K. C. & N. Ry. Co.*, 6th Mo. App., 427. Those were both actions *by bondholders*, and the courts held that the covenants in the leases were for their benefit, and that they could sue for the rental, which was to be paid to them in the shape of interest on their bonds.

Seney, however, did not stand in like relation. He was not a creditor. He could not sue on the personal covenant or recover a personal judgment. He was only concerned in the trust property and none of the earnings or rentals that accrued before he took possession, or demanded possession, belonged to the trust estate. They belonged to the mortgagor, or those in possession under him as absolutely as though no mortgage had ever been made.

III.

The decree ought to be affirmed, because the only way in which Seney, as trustee in the mortgage, could entitle himself to the rents and profits of the mortgaged property, was by entering under his mortgage, or by filing a bill to foreclose and demanding a receivership.

The mortgage to Seney did not purport to convey to him the rents and profits of the mortgaged property. To secure the payment of the bonds, the St. Louis, Kansas City and Northern Railway Company (the Wabash)

granted to Seney, in trust, the railroad as therein described, *without any mention of earnings, rents or income.* If default occurred and continued for sixty days he might, whenever requested to so do by the holder o holders of fifty or more of the bonds, take possession of the mortgaged road and operate it. It was also provided, that until such default, *the mortgagor should be entitled to have, hold and possess the railroad, and collect, receive and retain all the revenues arising from its use.*

The record shows that Seney made no application or demand for possession of the property covered by his mortgage until the 6th day of April, 1886, on which day the Court on his application made an order (printed record, page 155), directing the receivers to surrender the property to him within ten days. It is agreed (printed record, page 157), that the above order was fully complied with, and the property surrendered to him on April 16, 1886.

On those facts, the question is: Was Seney entitled to the rental or to the earnings of the mortgaged property—if there had been any earnings—prior to the date on which he demanded possession of the road? If he had been trustee of such earnings or rentals, or, in other words, if the earnings or rentals which accrued *before he demanded possession* had constituted *a part of the estate conveyed to him as a security for the bonds*, then no doubt he should be permitted to recover them. While, on the other hand, it is equally clear, *that he should not be permitted to recover them, if it shall be held that such earnings or rentals constituted no part of the security.* If those rentals were no part of the property pledged to

secure the bonds described in the mortgage, then it is wholly unnecessary for us to inquire to whom such earnings or rentals belonged, for unless they were conveyed to him he has no concern about them.

Similar questions have been before this Court in a great variety of cases, and in every instance the claims made by the trustees and mortgagees, have been denied, on the sole ground that such earnings and rentals were no part of the property pledged as a security for the debt. Where the conveyance provides that the mortgagor or his assigns may remain in possession until default, but that when default occurs the trustee may enter, it is then said that the trustees or mortgagees have their remedy in their own hands, and that they can only secure the earnings of the mortgaged property *by taking possession, or making the proper effort to get possession.*

In *Kountze* vs. *Omaha Hotel Co.*, 107 U. S., 392, the question of whether such earnings and rentals, as accrued while the mortgagee permitted the mortgagor to remain in possession, could be recovered as a part of the property pledged to secure the debt, was considered, and the Court then said:

"In the case of a mortgage, the land is in the nature of a pledge, and it is only the land itself—the specific thing—which is pledged. The rents and profits are not pledged; they belong to the tenant in possession, whether the mortgagor or a third person claiming under him. This is not only the common law, but it is the express statute of Nebraska, which declares that 'in the absence of stipulations to the contrary, the mortgagor retains the legal title and right of possession.' The plaintiff in this case was not entitled to possession, nor to the rents and profits. His foreclosure suit did not seek possession, but sought a sale of the specific thing

—the land. In such a case, until the litigation is ended, it doth not appear that there must be a sale, or even that the plaintiff is entitled to a sale. The defendant in possession is entitled to redeem the land until a sale is made, and until then he is entitled to the rents and profits, which belong to him as of right. *The taking of the rents and profits prior to the sale does not injure the mortgagee, for the simple reason that they do not belong to him.*"

In *Freedmen's Saving Co.* vs. *Shepherd*, 127 U. S. 502, the Court, after reviewing the authorities at some length, said:

"It is, of course, competent for the parties to provide in the mortgage for the payment of rents and profits to the mortgagee while the mortgagor remains in possession. But when the mortgage contains no such provision, and even where the income is expressly pledged as security for the mortgage debt with the right in the mortgagee to take possession upon the failure of the mortgagor to perform the conditions of the mortgage, the general rule is that the mortgagee is not entitled to the rents and profits of the mortgaged premises until he takes actual possession, or until possession is taken in his behalf by a receiver."

In *Gilman et al.* vs. *Ill. & Miss. Telegraph Co.* (91 U. S., 603), the trustee in a mortgage which covered a railroad and its rents and incomes, sought to recover as against *a general creditor of the mortgagor*, a fund that had been earned before the trustees took possession of the mortgaged property. The deed of trust in that case, as in this, provided that if default occurred in the payment of interest, the trustee might take possession and receive the incomes and earnings of the road and apply them to the debts secured.

In determining the rights of the parties, the Court held in that case that the trustees had absolutely *no claim at all upon the funds as against any one*, and that they

were as free as though no mortgage existed. The Court said:

"It is clearly implied in these mortgages that the railroad company should hold possession and receive the earnings until the mortagees should take possession, or the proper judicial authority should interpose. Possession draws after it the right to receive and apply the income. Without this the road could not be operated, and no profit could be made. Mere possession would have been useless to all concerned. The right to apply enough of the income to operate the road will not be questioned. The amount to be so applied was within the discretion of the company. The same discretion extended to the surplus. It was for the company to decide what should be done with it. In this condition of things the whole fund belonged to the company, and was subject to its control. It was, therefore, liable to the creditors of the company as if the mortgages did not exist. They in no wise affected it. If the mortagees were not satisfied, they had the remedy in their own hands, and could at any moment invoke the aid of the law, or interpose themselves without it. They did neither."

In *Galveston Railroad* vs. *Cowdry* (11th Wall., page 483), the Court had the same question under consideration. In that case the bondholders contended, that because their mortgage covered the tolls and incomes, they were entitled to such as accrued *before they took possession;* but the Court in deciding the question said:

"Now, what is the language of the deeds of trust? They convey, it is true, with the other premises, the tolls, income, issues and profits, whenever the company shall be in default of payment; but a subsequent clause provides that in case the company shall at any time for the space of three months be in default in respect to the payment of either interest or principal of said bonds when due and demanded, on request in writing of any of the holders of the bonds, the trustees shall take possession of the railroad and other property and through the agency of the persons they may appoint, shall collect and receive the tolls, incomes and profits of the railroad

and mortgaged property for the purpose of the security before declared, and may sell the road upon giving due notice, etc. It seems to us that the latter clause defines and points out the manner in which the pledge of the tolls and income is to be practically carried into effect."

In *American Bridge Co.* vs. *Heidelbach* (94 U. S., 798) it appears that the Kansas and Missouri Bridge Company had conveyed its property in trust to Heidelbach to secure its bonds. Beside the bridge, the mortgage included the rents, issues and profits thereof, in so far as the same were not necessary to pay its operating expenses and the cost of keeping it in repair. The mortgage also provided that if default occurred in the payment of interest, and continued for six months, the trustee, upon the written request of the bondholders, might take possession of the mortgaged premises and manage and operate the same and collect all rents and claims due and to become due for the use of the bridge.

In 1874, the company being in default in the payment of its interest, the trustee, Heidelbach, filed his bill, in which he alleged, among other things, that the Kansas and Missouri Bridge Company, the mortgagor, had in its possession certain moneys and also certain claims which ought to be applied upon the mortgage debt. At that stage of the proceedings it also appears that the *American Bridge Company* had recovered a judgment against the Kansas & Missouri Bridge Company, and that after having execution issued and returned *nulla bona*, it filed a bill in equity, claiming that it was entitled to have its judgment paid out of said funds. The question of whether said moneys and claims (those that had accrued from the use of the bridge before the

bill was filed by Heidelbach, the trustee) were covered by his mortgage was, therefore, squarely presented. If the mortgage covered the moneys and claims, then, of course, the rights of the mortgagor, or trustee, would prevail over those of the judgment creditor. In disposing of the case the Court said:

"In this case, upon the default which occurred, the mortgagees had the option to take personal possession of the mortgaged premises, or to file a bill, have a receiver appointed and possession delivered to him. In either case, the income would thereafter have been theirs. Until one or the other was done, the mortgagor, as Lord Mansfield said in *Chinnery* vs. *Black*, 3 Doug., 391, was 'owner to all the world and entitled to all the profits made.'

The mortgage could have no retrospective effect as to previous income and earnings. The bill of the trustees does not effect the rights of the parties. It is an attempt to extend the mortgage to what it can not be made to reach. Such a proceeding does not create any new right. It can only enforce those which exist already. The bill of the trustees is as ineffectual as if the fund were any other property, real, personal or mixed, acquired by the mortgagee, *aliunde*, and never within the scope of the mortgage."

To the same effect are the following cases:

Sage vs. Memphis, &c. R., 125 U. S., 361;
Teal vs. Walker, 111 U. S., 242;
Dow vs. Railroad, 124 U. S., 652;
Howell vs. Ripley, 10 Paige, 43;
Post vs. Dorr, 4 Edwards Ch., 412;
Ranney vs. Peyser, 83 N. Y., 1.
Noyes vs. Rich, 52 Me., 115.

Surely, if the rule continues to be as declared in the foregoing cases, then it is clear that Seney was not entitled to rental, or interest, until he took possession, or demanded possession, under his mortgage.

IV.

The decree of the Circuit Court ought to be affirmed, because appellant was informed by the nature of the proceeding, the general course of the administration and the orders made in the case, that his interest would not be paid except from the earnings of his own line, and not even then, until after the labor and supply debts of the company had been discharged.

In order to determine whether there was anything in the nature of the proceeding, the general course of the administration, the orders of the Court or the conduct of the receivers to induce appellant to believe his interest would be paid *from the earnings of the other lines of the system*, it is necessary for us to direct the attention of the Court to the orders entered and the reports filed by the receivers. The orders and reports affecting the general administration of the property were as follows:

1st. The receivers were directed by the order of their appointment to keep such accounts as might be necessary to show the sources from which all incomes and revenues were derived with reference to the interest of all parties to the suit and the expenditures made by them.

2nd. In October, 1884, only a short time after their appointment, the receivers asked the advice of the Court with respect to the payment of interest on the bonds of the "Havana Division," one of the branch lines of the system, and the Court in its opinion then said:

"I stated at an early day (and Judge Brewer had gone over the matter and we are in accord with regard to it) that I am not going to take the money that belongs to the underlying mortgages to pay interest on non earning

branches. If they have got to fail they must fail. I will protect the underlying mortgages especially, and they haven't got enough here to do it. * * * If this branch is earning enough to pay its own interest, that is another inquiry; but certainly I am not going to sit here and order that the earnings that belong to other branches in this consolidated system shall be taken to pay concerns that do not earn running expenses. Let them collapse."

3rd. On March 20, 1885, the receivers reported to the Court, that up to November 30, 1884, they had sustained a loss of $12 544.66 in operating the Clarinda Branch, and they then asked the advice of the Court with respect to the future operation of that line, and concerning the future payment of interest or rental on that branch or division, and the Court then entered an order, as follows:

"Where a subdivision earns no surplus, simply pays operating expenses, no rent or subdivisional interest will be paid. If the lessor or the subdivisional mortgagee desires possession or foreclosure he may proceed at once to assert his rights. While the Court will continue to operate such subdivision until some application be made, yet the right of a lessor or mortgagee whose rent or interest is unpaid to insist upon possession or foreclosure will be promptly recognized.

That, it is true, may work a disruption of the system, as evidenced by the movement just made in respect to this Cairo Division, but the proceeding for disruption will come from the subdivisions. The Court is not sloughing off branches, tearing the system in two, but the disruption, if it comes, will come from those who seek separation and have legal right to do so."

The foregoing is sufficient to show that the Court intended from the beginning that the receivers should keep the accounts of the earnings and expenses of the different lines separately; it also shows that the receivers were prompt in reporting to the Court that they were op-

erating this line at a loss, and that the Court emphatically declared, both in October, 1884, and in April, 1885, *that no interest would be paid on the non-paying branches.*

Notwithstanding all that, the appellant was unwilling to receive his road and did not do so until April, 1886. Nevertheless, it was contended by appellant in the court below, and will probably be contended here, that he was justified, under the orders of the Court and conduct of the receivers, in believing that interest on the Clarinda bonds would be paid.

In reply to that contention the Circuit Court (Brewer, J.), said:

"There was certainly nothing in the action of the Court or the various orders made by it, which gave to any party the right to expect other than his legal claims. Of course, the order in the first instance was to pay rentals out of the income, and that income, as we have seen, is all exhausted in preferential debts and operating expenses. Early in the history of the receivership the order of the Court was to keep separate accounts of the earnings of the different lines, and the clear intimation of all the orders and opinions, as well as the express language of many, was that the income from any property, part of the general system, would be appropriated to the specific claims upon that property."

The foregoing opinion, when taken in connection with the facts in the record, conclusively show that there was nothing in the nature of the proceeding, the conduct of the receivers, or in the orders of the Court, to induce appellant to believe that interest on the Clarinda bonds would be paid from the earnings of the other lines of the system.

V.

The decree ought to be affirmed because Seney has no equitable claim on the funds of the receivership.

The following facts are agreed upon in this case:

1st. It is stipulated (printed record, p. 33), that while the Clarinda Branch was in possession of, and being operated by the receivers, they expended, in necessary maintenance and operation, a large sum in excess of the gross incomes and earnings arising therefrom.

2d. It is stipulated (printed record, p. 171), that the labor and supply claims and other preferential indebtedness of the Wabash Company, which the receivers were directed to pay, amounted to $4,417,491.00; and

3d. It is agreed that the net earnings of the whole system were never sufficient to discharge the preferential indebtedness of the company, and that only $1,464,229.32 thereof had been paid, when the Court ordered the receivers to surrender the Clarinda Branch to Seney.

If Seney is permitted to recover a rental equal to the interest on the bonds secured by his mortgage, it is clear that whatever sum he is paid will have to be taken from the earnings of the other lines of the system. This is not a case in which *restitution* should be made to Seney, because there has been no *diversion* of the earnings belonging to his line. The only diversion shown in the record, consisted in taking funds *that belonged to the other lines of the system, to meet the losses sustained in the operation of his branch.* On what principal, then, is appellant entitled to a lien on the other lines of the system? Why should this line have more than it has already received? The Clarinda Branch contributed

nothing towards the payment of the labor and supply claims. That branch was operated at a loss, and it was emancipated from the lien of the labor and supply debts, and finally it was delivered to him as soon as he applied for it.

Notwithstanding the foregoing facts, it was contended in the Court below, and will, no doubt, be contended here, that the appointment of receivers over all the lines of the system, in some way, converted the claim for interest on the bonds secured by mortgage on the Clarinda Branch into a *receivership debt*, which should be paid from the earnings of the other lines of the system. But on what equitable principle should the other lines of the system be required to emancipate the Clarinda Branch from the lien of the labor and supply claims; make good a large deficit contracted in operating and preserving that line, and then be required to pay interest to the parties holding bonds secured by mortgage on that branch?

Before the receivership, Seney had no lien on any of the other lines of the system, or on their earnings. His lien was confined to the Clarinda Branch, and the appointment of receivers over all the lines did not change that relation.

Speaking on that point, in its first opinion (printed record, p. 39), the Court (Brewer, J.), said:

"The idea which underlies this bill is that which underlies the action of a voluntary bankrupt under the bankrupt law. Finding himself insolvent, he surrenders his property to the Court, to be disposed of for the benefit of his various creditors. Such action in no manner changes the relative rights of his various creditors. They stand subsequent to this action, as they did before, and

their various rights and equities are determined, not by his action in surrendering his property to the custody of the Court, but by the terms and obligations of the contracts theretofore entered into. Narrow the question in this way: Suppose A is the owner of a mill and the lessee of an adjacent farm. Having mortgaged both his mill and his leasehold interest, and finding himself insolvent, he applies to the Court by bill for the appointment of a receiver to take possession of his property and dispose of it for the benefit of his creditors. Can it be that his action in filing the bill or the action of the Court in appointing a receiver makes the claim for rental, an unsecured obligation, paramount to the secured lien of the mortgage? The proposition will be startling, if true. It would put it in the power of a mortgagor to dispossess the vested lien of the mortgagee and render such lien subordinate to unsecured claims. It is true that after the appointment of a receiver the mortgagee came in with an application for a foreclosure, but the assertion of his rights to a foreclosure was not different from that of the assertion of the lessor to his claim for rent. Each took what rights were given him by his prior contract, and neither by his action waived any of his rights or consented to a subordination of his priority."

The theory of the bill on which the receivers were appointed, was that the Court should preserve and operate all the properties, not in the interest of any particular line, but for the equal benefit of all the lines. The only available funds of the receivership were those derived from operating the properties. While earnings were to be used in paying the debts and liens resting upon the properties in the order of their priorities, there was no equitable principle, or just reason, for saying that one line was being operated for the benefit of another, or for saying that the earnings of one division should be taken to satisfy the interest due on bonds that were secured by mortgage on the other lines of the system.

After the Wabash Company become insolvent and receivers were appointed, there was no contract relations existing between the Clarinda Branch and the other lines of the system, which made it legal or equitable to tax the other lines of the system for the benefit of the Clarinda Branch. It was, therefore, the duty of the Court to distribute the earnings of the system, not in recognition of any contract obligations of the Wabash Company, but on equitable principles, giving to each creditor what he was justly entitled to, according to his rank or class. And if there was a class of preferential indebtedness, which was prior in equity to interest on bonds, it was the duty of the Court to pay all in that class from earnings before it applied anything to the payment of interest.

That was the underlying principle of this receivership, and as Seney never objected to the order directing the receivers to pay the preferential debts before paying interest, he can not now complain of not having received his interest, since it is an admitted fact that the earnings of all the properties were never sufficient even to pay the preferential debts. And as he never asked for possession of the mortgaged property, and as there was no order of court, or act of the receivers, which could have induced him to believe that his interest would be paid from the earnings of the other lines, the decree of the Circuit Court should be affirmed.

WELLS H. BLODGETT,
Attorney for Appellee.

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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1893.

TERM No. 26.

GEORGE I. SENEY, Trustee,
Appellant,

vs.

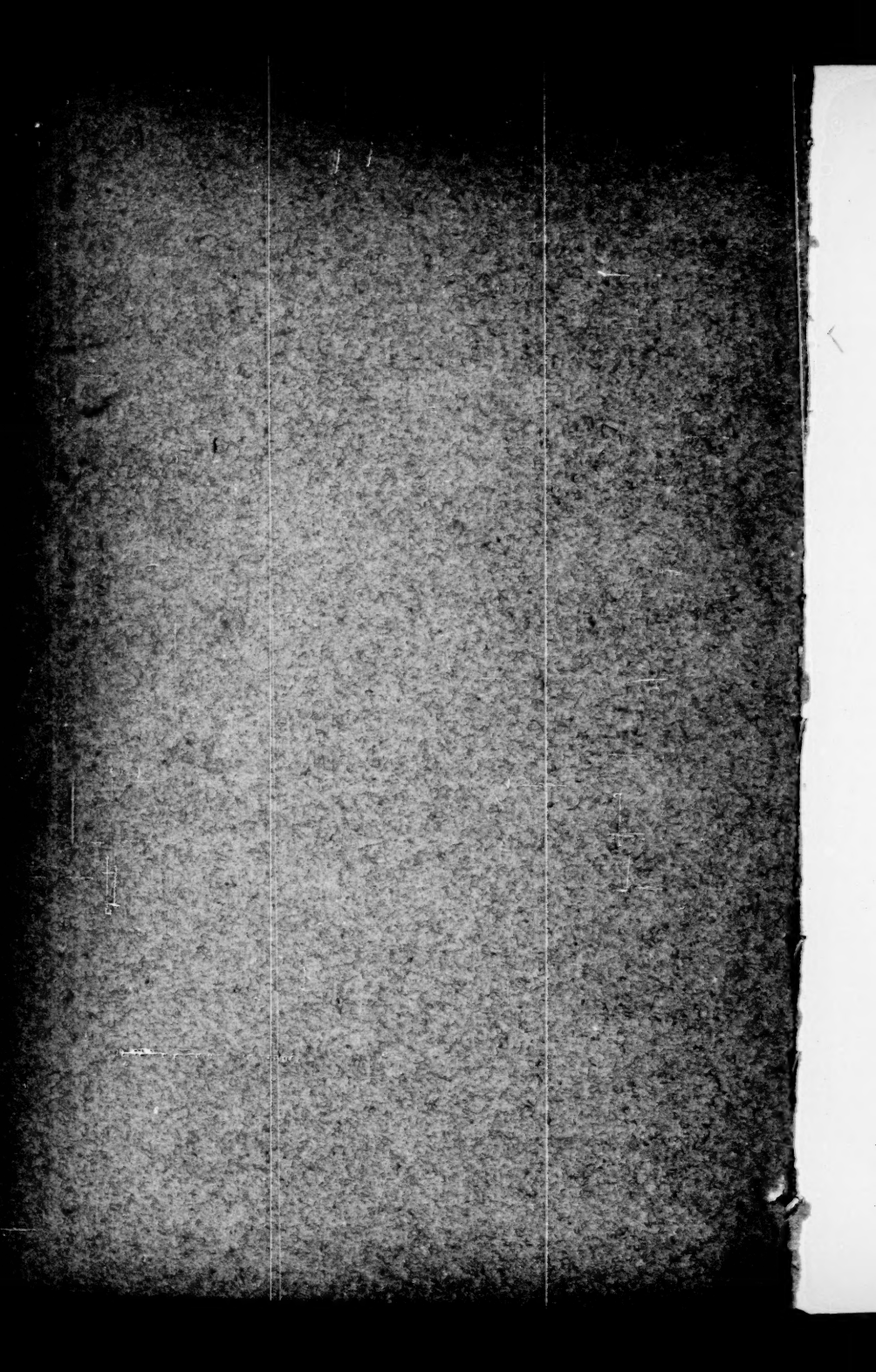
THE WABASH WESTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF FOR APPELLEES.

THOMAS H. HUBBARD,
For Appellees.

C. G. BURGOYNE, Cor. Walker and Centre Streets, N. Y.



Supreme Court of the United States.

OCTOBER TERM, 1893.

Term Number 26.

GEORGE I. SENEY, TRUSTEE, APPELLANT,

VS.

THE WABASH WESTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

Brief for Appellees.

STATEMENT.

This case belongs to the same class as the cases of the Quincy, Missouri and Pacific Railroad Company and the St. Joseph and St. Louis Railroad Company vs. Humphreys, decided by this Court in April, 1892, and reported in Vol. 145, U. S. Reports, pp. 82 and 105.

Those decisions are the law for this case, if the controlling facts in those cases are the same as in this. It will, therefore, only be profitable to inquire whether the facts which controlled those cases exist in this case and whether this case presents any different facts so cogent as to modify the decision.

Facts Common to All the Cases.

In this case, as in those, the claim of the appellee is for rental of a railroad for a certain period during which it was in possession of the Receivers of the Wabash, St. Louis and Pacific Railway Company (Record, p. 4). The receivership in all the cases originated in the same proceedings and was constituted by the same orders (Record, pp. 54, 67).

In all the cases the Receivers were the ministerial officers of the Court, designated, in the decisions referred to, as ordinary chancery receivers (145 U. S., p. 98).

In this case, as in those, the Receivers took possession of the leased line in pursuance of the order appointing them, and maintained and operated the line only until the Court ordered its surrender. This order was made April 6th, 1866 (Record, p. 155), upon a petition filed March 22, 1886 (Record, p. 137). The order directed the surrender of the road within ten days (Record, p. 155), and the surrender was made April 16, 1886 (Record, p. 157).

The facts which show the purpose of the Receivers in holding possession are the same here as in the former cases. It does not appear that their action was dictated by the idea of keeping the property in order to sell it, or using it to the advantage of the creditors, or doing otherwise than "abstain from trying to get rid of the property" (145 U. S., p. 101). In this case, as in those, the Receivers lost money by maintaining and operating the road. It was not a source of profit to the receivership, but a charge upon the funds derived from other lines.

By the agreed statement of facts on which this claim was submitted to the Master (Record, p. 25) it appears "that during the time the said demised railway was in possession of, and being operated by, Humphreys and Tutt as Receivers, they expended in necessary maintenance, operation and taxes thereupon, a large sum in excess of the gross income and earnings arising therefrom (Record, p. 27).

The disparity between the earnings and expenses of this property is indicated by the proof that from May 29 to November 30, 1884, the gross earnings were $2,790.79, while the operating expenses were $6,667.58 (Record p. 93).

In this case, as in those, the relief sought is to charge the claim upon the *corpus* of a receivership property, as a receiver's debt outranking mortgage liens.

The master allowed the amount claimed, as against the lessee the Wabash, St. Louis and Pacific Railway Company, but refused to allow it as against the receivers (Record, p. 29).

But the appellant excepted to this decision (Record, p. 33).

It may be stated, in passing, that the amount allowed by the master was nearly twice the amount of rental due for the leased line during the period of possession.

Facts Differing from Former Cases.

This case differs from those formerly decided in the circumstance that the claimant in each of those cases was the lessor company; whereas, in this case, the lessor company makes no claim. But the claimant is a trustee under a mortgage which covered the leased and other property, and is himself a stranger to the contract of lease. Since this circumstance cannot be counted as a fact cogent to compel a decision for rental in favor of the appellant, it need not be amplified in this statement.

This case also differs from those formerly decided in the circumstance that the receivers made one pay-

ment upon the bonds secured by mortgage to the appellant of the interest which is a measure of rental in the lease. No such payment was made in the cases formerly decided. The appellant insists that this payment was made in pursuance of a specific order of the Court, and that the order and the payment committed the receivers to make further payments for the period which intervened up to the surrender of the road.

The order referred to was the confirmation of a master's report, filed June 28th, 1884 (Record, pp. 79, 84), made upon a petition filed by the Receivers June 26th, 1884 (Record, p. 70).

In this petition the receivers stated that the railway in question had been mortgaged to secure 264 bonds (p. 71); that they were advised and believed that the railway, since its construction, had earned interest on said bonds (p. 75), and that they believed they could pay the interest from the rents of the property in their possession (p. 77).

Upon this petition the order was that, "until otherwise directed, the receivers herein, from the incoming rents and profits of said property, after meeting such other obligations as they have been directed to discharge by the former orders of this Court, pay, from whatever balance may remain in their hands, the semi-annual interest as the same shall from time to time mature upon" * * * "two hundred and sixty-four bonds of one thousand dollars each, issued in July, 1879, and secured by mortgage on the Clarinda and St. Louis Railroad (otherwise known as the Clarinda Branch), amounting to $7,920" (Record, pp. 80, 81).

Presumably in pursuance of this order, which was made within a month after their appointment, the receivers made one payment of the interest, August 1, 1884 (Record, p. 28).

Yet the facts as stipulated, and the proofs, are that there was never in the receivers' hands any money derived from earnings of the Clarinda road sufficient to

pay operating expenses, maintenance and taxes (pp. 27, 93).

And it is also stipulated, as fact, that the preferential debts of the whole Wabash system when it went into the receivers' hands, added to the operating expenses of the system up to the time when surrender of the Clarinda branch was demanded, exceeded the total earnings to the same date by nearly three millions of dollars, to wit:

Preferential debts	$4,417,491
Operating expenses	24,151,249
	$28,568,740
Total earnings	25,615,478
	$2,953,262

Record, p. 171.

POINTS.

I. The decision should be affirmed for the reason that the appellant is a stranger to the lease, and has no legal claim for rental thereunder.

II. The decision should be affirmed for the reason that the appellant, as trustee under mortgages, can enforce a lien only on the mortgaged property.

III. The decision should be affirmed on the authority of the cases

Quincy, &c., R. R. Co. vs. Humphreys.
St. Joseph, &c., R. R. Co. vs. Humphreys, 145 U. S., 82 and 105.

BRIEF.

I. The decision should be affirmed for the reason that the appellant is a stranger to the lease and has no legal claim for rental thereunder.

(a) The instrument called the lease was made between the Clarinda and St. Louis Railroad Company of Iowa, and the St. Louis, Kansas City and Northern Railway Company, and conveyed an unfinished line of railroads extending from Clarinda, Iowa, to the boundary line between the States of Iowa and Missouri (Record, p. 5), a distance of eleven and four-tenths miles (Record, p. 100). The purpose of the conveyance was to unite the leased line with a line of about the same length which belonged to the St. Louis, Kansas City and Northern Company, and which extended from said boundary line to a connection in the State of Missouri with the last named company's Omaha division. The plan was to have the lessee company construct, maintain and operate the leased line, and the agreement to do this was the principal consideration of the lease (Record, p. 7).

In connection with the agreement to operate the Iowa line the lessee company agreed, out of the earnings of said line, or from its own funds, to pay interest on bonds to be issued for construction "to the amount of twelve thousand dollars per mile for each mile of said railroad, and bearing six per cent. interest" (Record, pp. 6, 7).

The total amount of these bonds would be $136,800, and the annual interest would be $8,208.

This is the only interest which, by any construction of the instruments found in the record, can be called rental.

(b) It may be conceded, upon this argument, that the appellee, the Wabash Western Railway Company,

is the successor of Humphreys and Tutt, receivers, in the sense that, if said receivers are liable for the claim here asserted, said company should discharge the liability.

But the appellant Seney is not the successor of the lessor company in the sense that he can assert a claim for rental under the lease.

He was not a party to the lease. The lease was never assigned or transferred to him.

The instruments to which he was party were two mortgages, one of which was made by the St. Louis, Kansas City and Northern Company, and the other by the Clarinda Company.

The former company conveyed to him its own line, extending from the Iowa boundary to a connection in Missouri with its Omaha division, and also its interest in the leased Clarinda line, to secure an issue of 264 bonds of $1,000 each, issued at the rate of $12,000 per mile for the total mileage of both roads. This mortgage contains the customary provisions for action by the trustees in the event of default (Record, pp. 10–14.)

Under this instrument the appellant Seney, as trustee, might perhaps, have assumed the position of lessee, and liability to pay rental of the Iowa road, had he seen fit, in the event of default and foreclosure to claim all his rights as mortgagee of the lessee. But he could not, by virtue of this instrument, occupy the antagonistic position of lessor, or acquire any right to receive rental.

The mortgage from the Clarinda Company, the lessor, conveyed to Seney, as trustee, in order to strengthen his title to the road of said Company, extending to the Iowa boundary, and contained a guaranty of interest on the bonds before mentioned, to the amount only of twelve thousand dollars per mile, for each mile of the road so conveyed (Record, pp. 16, 17).

But the conveyance was made subject to the lease, and the Clarinda Company expressly reserved to itself

the right to receive rental thereunder, until default under the mortgage (Record, pp. 18, 19, 20).

After default and proper action by the trustee, the right of the Clarinda Company to receive rental would be inconsistent with its guaranty above mentioned.

But the appellant Seney, as trustee, could only enforce his rights by virtue of the mortgages to which he was party, and could in no way maintain a claim for rental under the lease to which he was neither party nor privy.

(c) The appellant has been unable to put his claim on any other foundation than the mortgages. He calls it a claim for rental. But what he asks is interest on the total issue of bonds secured by the mortgages on the leased and the non-leased lines (Record, p. 4). His demand is for interest on $264,000 of bonds, amounting to $27,060. The rental would have been interest on $136,800 of bonds, and would have amounted to $13,816. The Master also recognized that the appellant's rights must be measured by the mortgages when he allowed the amount claimed "as a general unsecured demand against the Wabash, St. Louis and Pacific Railway Company," the successor of the mortgagor company (Record, p. 29).

(d) From this examination of the legal status of the parties it follows, that, in this case, the numerous authorities which relate to the liability of assignees, liquidators, statutory receivers or chancery receivers, for rental, or recompense for use, of leasehold property which may come into their possession, can give no aid to the appellant.

These authorities concern lessors.

But the appellant is not a lessor. He was neither party nor privy to the lease. He had no relation to it. His rights are those of a trustee or mortgagee, and must be determined with reference to the mortgage or trust deeds only.

II. The decision should be affirmed for the reason that the appellant, as trustee under mortgages, can enforce a lien only on the mortgaged property.

(a) It is profitless here to cite authorities upon the point when, or to what extent, the mortgagee is entitled to the income of the mortgaged property. This property had no income applicable to interest on bonded debt. The stipulation of fact is that its gross income was less than expenses of maintenance, operation and taxes. These are charges which the law prefers to the bondholders' claim for interests.

(b) Neither does it seem pertinent here to discuss when, or under what circumstances (if ever), the receivers of a railroad system composed of many lines will be authorized, or permitted, to pay from the income of profitable lines the interest on bonds which pertain to losing or unprofitable lines.

The total income from the whole Wabash system during the period in controversy was less than the operating expenses and preferential debts. There can, therefore, be no question as to application of income (Record, p. 171).

(c) The remedy which the appellant here seeks is to charge his claim upon the *corpus* of property not covered by his mortgages.

As to the property covered by his mortgages, the record shows he has had his remedy.

That property has been surrendered to him, and he has proceeded to foreclose his mortgage upon it (Record, pp. 148-157).

(d) The remedy the appellant seeks is to charge his claim for interest which accrued under his mortgage, upon the corpus of property to which his mortgage does not extend.

If this can be done it must be by virtue of some fact outside and beyond the mortgage. And the record discloses no fact which calls for such a remedy.

III. The decision should be affirmed on the authority of the cases

Quincy, &c., R. R. Co. vs. Humphreys.
St. Joseph, &c., R. R. Co. vs. Humpreys,
145 U. S., 82 and 105.

(a) The argument that the order of June 28, 1884, directing payment of interest on the bonds in question withdraws this case from the operation of the former decisions, may be best disposed of by recalling the facts in sequence of time.

(b) The receivers were appointed May 27, 1884. The order of appointment directed them "out of the income that shall come into their hands from the operation of said railroad or otherwise" to proceed to pay traffic balances; and, also, "in like manner," to pay rentals upon leased lines, terminals and rolling stock; and, also, to "pay in like manner, out of any income or other available revenues which may come into their hands," certain labor and supply claims (Rec., pp. 67, 68). On June 26, 1884, the receivers filed a petition for instructions in which they declared their belief that the earnings of certain lines would be sufficient to justify interest payments, and that the earnings of certain other lines would be insufficient (Rec., p. 70). Among the former was mentioned the road in respect of which appellant now makes claim.

On June 28, 1884, with respect to this line the Court directed that "On the first days of February and August (or as soon thereafter as practicable) the Receivers pay the semi-annual interest on the bonds in question from the incoming rents and profits of said property" (meaning the entire property), "after meeting such other obligations as they have been directed to discharge by the former orders of this Court" (Record, pp. 80, 81).

On the first of August, 1884, the receivers paid interest on the bonds in question (Record, p. 28).

It afterwards appeared that during the period for which interest was paid the Clarinda road was operated at a deficit (Record, p. 93).

It also appeared that there was no income from the entire property applicable to interest payments (Record, p. 171).

(c) Now, if an order had been made in favor of the appellant, and had remained uncomplied with, there might be room for argument as to whether compliance should be enforced, irrespective of preceding and different orders. But here we have an order which was more than complied with. The receivers were directed to pay him incoming rents and profits, after meeting certain other obligations. They paid without meeting the other obligations, and without having rents or profits applicable to the payment. The appellant's company received an overpayment, and ought properly to make restitution. Instead of doing this the appellant relies upon the order, though fully complied with, as establishing some exceptional and further claim.

(d) In fact, the order of June 28th added nothing to the order of May 27th, unless it be definition or designation.

The order of May 27th directed the payment of rentals, when there was income applicable to such payment.

The order of June 28th did no more.

Under the former order, and with facts precisely the same as presented by this record, this Court made the decision reported in the 145 U. S.

The order of June 28th imports no new facts.

The decisions already made are controlling.

IV. The decision appealed from should be, in all things, affirmed.

THOMAS H. HUBBARD,
Counsel for Appellees.